

COURT PAPERS

Closing Argument of

Jim Garrison,

September 25th, 1973

UNITED STATES OF AMERICA

VERSUS

JIM GARRISON ET ALS

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Case Number 71-542

10:00 A. M.

THE COURT: Call the jury.

(Jury returns to the courtroom)

THE COURT: Proceed.

MR. GARRISON: May it please the Court, ladies and gentlemen of the Jury:

This is a new experience for me. I have never been in court as a defendant before. I have been in court, of course, defending as lawyer, but this has been the first time I have been in court as both a defendant and a lawyer. I hope I have done as well for myself as I might have done for another.

I hope you will be patient with me, because understandably I will be somewhat more involved in this particular case since it concerns me. As a lawyer; I always have been concerned about the outcome of my client's case, but I find that in this particular case I am even more concerned than ever.

It has been two years now since I first was charged by the Federal Government in this case, two years during which I have been conscious of the reflection cast upon my office by the charge.

It has been a long two years, because it has not been merely a case of my being conscious of the shadow cast over the office which I worked long and hard to build. It also has been a long two years because throughout that time I have had to live with the fact that I face the penitentiary.

This is a federal charge in Federal Court, and whether or not I go to a federal penitentiary well may be in your hands.

I would like to quote a few lines from the Declaration of Independence, and then I will show how I think they apply to your role in this case -- more than that, to your role as a citizen in this Government --but particularly to your role in this case.

The lines will be familiar to you.

"We hold these truths to be self evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. "

Now, at this point I want to call your attention to three things:

This is really the first legal document which actually refers to the origin of our country, and at the very outset, it makes it clear that this country is based on the belief that men are created by God, and that this country is structured and created as a country with a belief in God, and secondly, the point is made in the first few lines, that to secure these desired rights -- in the words of Thomas Jefferson -- governments have been instituted among men, because without governments no such rights could be secured.

In a moment I will refer you to the problem of keeping these rights after government has arrived, but at the outset of the Declaration of Independence it

makes clear that we must first have government to secure these individual rights in the first place.

But in the final analysis it says, "These governments derive their just powers from the consent of the governed."

Now, remember that at the time Thomas Jefferson wrote this Declaration of Independence, a revolution had begun, a revolution in which the American colonies were in full rebellion against England. England was already one of the world's great democracies, but we had learned the hard way, as a colony, that even a great democracy sometimes, in some ways, can fail to protect the rights of all its citizens.

The result of that knowledge, that there has to be some actual protection for the citizens against the government itself, was the addition of the Bill of Rights to the Constitution.

When the Constitution was drawn up, at first, it lacked the Bill of Rights, but the attention of the people was called to the fact that no matter how great the government is -- and I'm sure that every person in this room feels that this is the greatest government in the world -- it is possible for individuals to lose their rights because of the very size and power of the government. And that was the reason for the Bill of Rights becoming part of the Constitution.

As a result, the Constitution to a great extent is a document designed to protect the individual citizen from the government.

Now, how does that machinery work, as a practical matter?

In a general way, with regard to our government in Washington, it works through the representation of the American citizen in Congress, particularly in the House of Representatives, where there is an election every two years.

Because of our system of checks and balances, when something does go wrong with another part of the government, whether it's the Executive branch, or whatever part, Congress has the power to participate, and to do something about it. To some extent you have seen that happening recently.

When that is happening, when Congress is reacting in that way, you have your own representatives seeing to it that your government gets back on the track where it belongs. And that is one way in which you play a role in your government, although it is a very indirect way.

A more direct way in which a citizen of this country plays a role in the government, and one of the most responsible ways, is when he sits as a member of a jury, in judgment on a man charged with a crime.

There is no more responsible position in this country, no matter how lofty the office might be, than to be a juror and to pass judgment upon the question of whether a man may remain free or is to lose his freedom.

At the outset of my talk to you, I wanted to touch upon your functions as I saw them, and upon the tremendous responsibility you bear -- and upon your

role, upon your role as insulation against the very power of government, itself.

You have a role which you may perform in two different ways. In one case, for example, it may be clear that the law clearly has been violated and it may have been proved beyond a reasonable doubt that the law has been violated -- and your role then is to help enforce the law.

In another instance you may find that there has not been shown evidence of guilt beyond a reasonable doubt.

Perhaps, in such a case, you might find that there appears to be some evidence, but not evidence beyond a reasonable doubt -- and when you find that and you let your conscience hold firmly to your conclusion that there has not been shown evidence of guilt beyond a reasonable doubt, then you act as an insulation, and a necessary insulation, between the tremendous power of our great central government and the relative weakness of the individual.

So I can't tell you how important you are, not only to the government, but to the person who is prosecuted.

Essentially the Government's case against me, so far as I can see, consisted of the presentation of five types of witnesses, or types of evidence.

First of all, the presentation of pinball location owners; then the pinball operators; then former Captain Soule; then the long presentation of what we might call the "magic tapes", and then there was the man named Gervais.

That essentially was the government's case, so far as I see it. But I suggest to you that, step by step, as time went on, the Government's case faded away so that we are reminded of the smile on the Cheshire cat in "Alice in Wonderland". The cat faded away, as you will recall, until nothing was left but the smile.

I suggest to you that, after you examine and consider the evidence in this case, you will find that the Government's evidence against me has faded away, leaving nothing but the charge.

Then I suggest that you will want to do something about that, because that will be within your province.

Location owners testified. I think it's fair to state that the average observer could see that they were nervous, concerned men, but they testified truthfully.

And one after another of those witnesses testified that he never knew me, nor ever had anything to do with bribing me.

Then, one by one, the pinball operators testified. One of them I had met before, and yet, as the evidence showed, mistook him for someone else. I'm not the greatest politician in the world when it comes to recalling names, so I had called him "Jimmy" a few times, and he stopped and explained that his name wasn't "Jimmy" and that his name was Louis Boasberg -- and that was the beginning and the end of all of our conversations over the years.

I had met a second pinball owner, John Elms, once when he arranged through his lawyer, as he testified, to give me a campaign contribution.

At that time, you will recall, the pinball machines were not yet illegal. He also had given, he testified, such a contribution to my opponent. Outside of one or two times in that campaign, only one of which involved that contribution, I never saw him before and I never saw him again, until this trial. As he testified, I had never seen him before that contribution and it was quite open and obviously not intended as a bribe in any way. And, as I have pointed out, I never saw him again.

So those are the two of the three pinball machine owners that I "know", if you want to call that "knowing" -- one, an operator with whom I had a conversation in the hall and another whom I casually had met twice in my twelve years in office.

I also happen to know Mr. Callery, as a casual friend, something I'm not ashamed of at all. However, beyond that, if you go back to the testimony of all the rest of the pinball operators, you heard them say -- one by one, one by one -- "I have never met Mr. Garrison before; I have never bribed him; nor have I bribed his office" -- one after the other.

So, finally, the Government's case came to Captain Soule. Soule, you may recall, not too long ago was among the defendants about to go to trial. But since then he was severed from the other defendants and he became a witness for the government.

In the course of his testimony, Captain Soule produced a suitcase containing \$63,000.00 -- a rather dramatic moment, without any question, but

not necessarily a moment reflecting in any way on the government's charge that I am guilty of something. A dramatic moment, but not a moment with logical imperatives which affected my case in any way.

Now, incidentally - before I go any further - let me make one point so that you may see more clearly your role in judging the facts in a case like this. I still have a bit to say to you and I will be followed by the United States Attorney, Mr. Gallinghouse. This also may help to minimize the occasional side battles which sometimes occur during closing arguments.

Lawyers usually try not to interrupt during an argument, unless they really have to. Even though you may have seen them battle vigorously earlier during the trial, it's something of a custom to try to minimize interference with an attorney's argument at the end of the case.

But, sometimes a lawyer arguing a case may slightly misstate the facts, as he recalls them or, the testimony of a witness. Sometimes it happens that one lawyer's recollection is not precisely the same as the lawyers on the other side.

I just want to emphasize that in those instances, the judgement which counts is yours. You are the determiners of fact in this case.

Not even the Honorable Judge, who has presided over this case, and sought to make it as fair a trial as possible, can determine the facts. Only you, only you. And that's why, in a sense, you have more power to do good,

more power to bring justice into play while you serve as jurors than you will ever have all the rest of your lives.

For that matter, during the time you serve as jurors on a case and pass on a man's freedom, you really have, for that brief period, more power than anyone in the entire government.

Because you alone can decide what the facts are, and your decision as to what the facts are is final.

It is possible in some cases for a reversal to occur in a court where, perhaps unconsciously, a Judge has made a ruling which conflicts with the law, or sometimes the law is in change or in the process of change, and when the Judge makes the ruling under the present law, it may actually be perfectly accurate. But, the law is a vibrant living thing, and it changes quite often, so that sometimes such a change in the law occurs and you have what you sometimes have read about: a reversal.

But such reversals occur only with regard to questions of law. And quite often, you have cases where there are no mistaken rulings by the Judge, where every ruling of the Judge turns out to be a correct ruling, where there is no legal error. In those cases, there is no appeal, because an appeal is only based on a mistake of law.

What I am saying now is something which may not have occurred to you before. From your decision as to the facts of this case, there is no appeal.

And there will never, never, never again be an appeal during the rest of my life, or the life of Mr. Nims, or Mr. Callery -- because there is no appeal from the decision you will make concerning the facts.

So, that's why I urge you to use your conscience, when you meet to consider this case and to make a decision, because there is nothing a lawyer fears -- most particularly a lawyer who is representing himself -- than a case in which all of the Judge's rulings, in retrospect, turn out to be correct, therefore, making the case unappealable, but in which the jury has made an error due to a misinterpretation of facts in its deliberation at the end of the trial. When that happens, there is no appeal for the rest of our lives.

In addition to whatever sentence may be received, if a mistake like that is made, we bear the scars of that mistake for the rest of our lives.

Now, having commented briefly on the importance of our determination of facts, let me return to Captain Soule's testimony.

Now, I think it's fair to say that Captain Soule was one of the main witnesses for the prosecution. According to his testimony, he admits to being a central part of some sort of organized operation. Obviously, he acquired a large amount of money, most of it, as he said, from the pinball operations. The rest of it, as I recall his testimony, came from other chicanery connected with Mr. Gervais' "business activities" at the Fontainebleau.

Now, this is one of the most important witnesses of all for the government. This was the man who said, in effect, "I have been at the heart of the matter".

This was the man who said, in effect: "I have collected money and I have collected bribery and I have obtained information and sent it out in a sort of distant early warning system." This was the man who admitted to you that he was at the very center of some sort of bribery machinery.

Yet, when asked if he had ever had occasion to participate in any active bribery with me, his answer was no. When asked if I had ever asked him to do anything improper, this man -- one of the most important of the government witnesses -- said no.

When asked what kind of operation my office had, with regard to prosecution of pinball cases, his answer was an effective one. And it was, perhaps, the most telling part of his testimony when he admitted that to accomplish something, to actually accomplish something for anybody in the pinball business who was seeking to gain his services, he had to go over to the Police Vice Squad, to a contact which he had developed there. There was nothing in his testimony to indicate that he was able to accomplish anything in anyway through the operation of my office.

And I suggest to you that the reason for that answer will become apparent to you, if you recall the structure of my office, and the operation of it as described by former chief assistants and the former vice supervisors of my office. In my office, there was an effective system of control which is very important in this case -- because, in effect, the government is charging me with failing to enforce the law with regard to pinball machines.

But I had set up in my office machinery for supervising control over vice and gambling and -- as you could see when they took the witness stand -- the men who ran this machinery were competent men and not political hacks of any kind. You could hear from their testimony -- both supervisors and trial assistants -- that these were men who were never asked by me to ever do anything with regard to the pinball business. The vice supervisors, one after the other, testified that never did I asked them to do anything improper with regard to vice in anyway.

So, I just want to call your attention to the fact that at the very outset, the fact that I instituted such a structure in my office, that I set up such a vice supervisor operation, a vice-control department, is in itself evidence not that I was helping the pinball business in anyway, but that I actually was acting to discourage it and to enforce the law.

Now, there is another area of testimony to which I should call your attention, and I am still talking about the testimony of government witnesses. If you can go back to the testimony of the location owners, you will recall that one after the other, one after the other, told you that he would only pay off to somebody he knew. With rare exceptions, neighborhood bars, neighborhood restaurants, the poor man's clubs, paid off only to somebody they knew.

"Why wouldn't you pay off to a stranger?", they were asked again and again. And the answer came back, repeatedly, "because he might be a police officer and I might be arrested". And that, "I might have to go to court."

The thrust of their testimony -- and all of these location operators were government witnesses -- was that there was a very definite climate of law enforcement with regard to pinball payoffs; and they knew it. Even when they paid their friends off, they paid them surreptitiously. In some cases, they left the room, in other cases they waited until other customers, whom they did not know, had left.

But, they had to pay only friends and they had to pay surreptitiously because they knew that there was effective law enforcement with regard to pinball payoffs in New Orleans. This was not, as their testimony indicated, like the famous Cicero, Illinois. This was not one of these wide-open-towns -- not since I have been district attorney -- where you could flaunt the law and pay off a stranger and not worry about anything happening. The government witnesses, the location owners, themselves, made clear at the outset that there was in process in this city law enforcement with regard to pinball machines.

Now, I mentioned the testimony of one of the star witnesses of the prosecution, and his testimony to the effect that I had never asked him to do anything wrong. I reminded you of his testimony that to accomplish something he had to either leave the D. A. 's office or else do it before the office opened.

So, here we are with the location owners having testified, with the pinball operators having testified, with star witness Soule having testified -- and the government's case against me, instead of growing stronger, has begun to grow fainter and fainter and fainter.

So, then there came the tapes, the magic tapes as I have called them, because there are so many things you can do with them. And after the tapes, there came Gervais.

So, what we come down to in reviewing the government's case, really, are two threads, and threads which I think the evidence has revealed to be very slender threads: The government's secretly recorded tapes and the man named Gervais.

But before we come to that, there is one more point about the location owners worth making and that is to remind you that each one had immunity from the government, each one was perfectly free to tell you the truth. And I think it's safe to assume that they did.

These location owners testified that pinball payoffs had been going on in New Orleans from twenty to thirty years.

One man, John Bordes, testified that pinball payoffs had gone on without interruption since the 1940's.

Now, I am not going to bother to take up your time with my own travels and jobs, since the 1940's -- but that was a long time ago, and I have been doing many things since the 1940's. I have not been district attorney since the 1940's -- and yet one of the location owners testified that since the 1940's, there have been payoffs on pinball machines.

Now, I call this point to your attention simply to let you know that this is not a case in which there was a city here where there were no payoffs on pinball

machines and then suddenly Jim Garrison was elected district attorney, and immediately pinball machines begin paying off all over the city. This is not the case at all. Quite to the contrary, the location owners testified, one after the other, that the pinball payoffs have been going on for many, many years.

Now, that doesn't mean that I could ignore it and I will show you shortly that we did not ignore it. But, it does mean that we did not bring it into being, that this was the situation from time immemorial. I will show you that not only did I not ignore these payoffs to winning pinball players - I will show you that I actually did more than any other District Attorney in the city ever did to discourage the pinball operation in New Orleans.

And remember, the charge is, in effect, that I helped the pinball operation.

Let me stop a moment and remind you of the nature of the particular charge against me so that you can keep it in mind as we go along. This is very important because it relates to the burden of proof, which the government bears, as the Judge will charge you later.

The government must prove Jim Garrison guilty beyond a reasonable doubt. But, I come now to the point of "guilty of what?" What is the precise charge? And I want you to know what the precise charge is so that you will be all the more aware of the burden which the government has undertaken in attempting to make you believe that Jim Garrison is a crook.

The government's charge states, with regard to me, that it was part of the conspiracy that the defendant, Jim Garrison, district attorney of Orleans

Parish, Louisiana, would receive protection bribe money, contributed by the defendants, who would operate illegal gambling businesses to permit the pinball business to operate free from any substantial law enforcement interference.

And I emphasize, because it is a most important point with regard to this case, that the specific allegation is that I "permitted these businesses to operate free of any substantial law enforcement interference." I suggest to you that the evidence is eloquently clear to the contrary.

As you know by now, I do not have to prove that I am innocent. The government has to prove that I am guilty. That, too, like having a jury, is part of our system. But, nevertheless, in spite of the fact that I don't have to prove I am innocent, I think the fact remains that the weight of the evidence clearly has shown that I did not permit these businesses to operate "free of any substantial law enforcement."

In fact, the evidence has demonstrated that I took actions very much to the contrary -- I took stronger actions than had ever been taken before.

The testimony of all of these government witnesses -- the pinball location owners -- was to the effect that none of them ever had succeeded in fixing a case in the D. A. 's office. If they ever had succeeded, please believe me, you would know about it, because this is a very competent government prosecution, to say the least. And it hardly would have glossed over such a fact if it had

been possible to prove it. These location owners had received immunity and if they ever once had succeeded in bribing my office, paying my office off, fixing a case, you would know all about, and you can bet your life on that.

And such testimony did not end with the location owners. It was the same with the pinball machine owners and operators. Now these owners and the operators really comprised, as a group, the major witnesses for the government. Some had pleaded guilty and had their sentences postponed, and others had been severed as defendants. Yet, for the most part, I suggest, they nevertheless felt they had to tell you the truth and, consequently, even though they testified as government witnesses they did not go so far as to lie in behalf of the government.

With regard to the pinball machine owners, one after the other, except for the two or three with whom I had had only brief encounters, testified under oath that they not only had never bribed me, but most of them had never even met me.

Yet, under the charge in this case, these men are supposed to be my fellow conspirators. These men are supposed to have been in the business of participating with me in this great conspiracy, a conspiracy apparently great enough to concern the United States government, and yet most of them never saw me before nor had had anything to do with me in any way nor ever bribed me in any fashion.

Now, in his opening argument, Mr. Gisleson -- of the government -- made the point, as I recall it, that such apparent absence of a relationship actually is "indicative of a conspiracy" -- where "these men" do not know "this man", where they have not seen him, and they have no connection with him of any kind, that, supposedly, shows the very conspiracy.

I suggest to you that there is at least one other alternative explanation of a circumstance where the pinball owners do not happen to know nor to even have encountered the district attorney -- and that other possible explanation happens to be that they simply had no reason to know him because he was never part of any conspiracy with them.

In any case, their failure to know me hardly adds up to proof of a conspiracy. Certainly conspiracy does not exist in the open, but the fact that evidence indicates that a group of men do not know the district attorney hardly becomes sinister simply because conspiracies usually occur in the dark and are clandestine. If anything, the government's curious contention here really amounts to an argument in my behalf. It amounts to an argument that most of these men just plain didn't know me and just plain didn't have any relationship with me -- which hardly adds anything to the government's claim that I was part of a conspiracy.

Now that we have disposed of these government witnesses -- the pinball machine owners and the location owners and Captain Soule -- we come to the

magic tapes and to the man named Gervais. You heard the prosecution play its tapes for you, and I am sure by now you have become aware that the very volume of tapes had the defect of making it clear that the one man who was really hustling all the time to put things together, the entrepreneur, the man who was attempting to locate everybody, to get everybody tied in, to get this man to go see this person, and that person to go see some other person, the man who not only put everything together, but somewhere along the way, had corrupted Captain Soule, and somewhere along the way, as Soule testified, had corrupted Sergeant Frey, the man who was the prime mover in the whole "conspiracy" operation -- was the government's own star witness, Pershing Gervais.

As a matter of fact, I think you have a right to ask yourselves -- since he was so successful in putting together all of the people and the structure which the government claims is a conspiracy -- you have a right to ask yourselves whether this so-called conspiracy would have existed were it not for the activities of the government's own star witness.

Let's say, for the sake of argument, that Pershing Gervais had not come to New Orleans to live, but at an early age had gone to work for General Motors of Canada, and after twenty-five years or so, had worked himself up to the position of division field manager, which is the customary route in reaching a division field manager's position. It usually takes longer than the

two weeks course which Gervais took. Let's assume that Pershing Gervais had done all this, and remained in Canada, and was working there, now.

To dream the impossible dream, for a moment, we have to ask the question, whether there then would have been any kind of conspiracy at all in New Orleans. This is the man who testified with pride of the money he made and the people he fooled and even of the ways in which he fooled the government. This is the man who was described by other witnesses with sufficient characterization so that you could see for yourself, I am sure, that he could manipulate anybody -- a man with something very close to genius for manipulation.

Now, if he had never lived in New Orleans, I ask you, what would have happened -- would there have been any structure at all without all his calls, without his manipulation? His calls to this man to meet this man, for this man to meet this man. . . . Without him there to keep putting everyone together, in an industry which was dying because of previous legislation by Congress, and well on the way out -- would there have been any pinball conspiracy? Would there have been any payoffs at the Fontainebleau for card games and pinballs, for massage parlors and handbooks -- all accomplished unknowingly in my name -- if this man had been spending the years working his way up to a division field manager in Canada instead of taking the quick short-cut to wealth by becoming a "short-stop", a reknowned "fixer" in New Orleans?

I suggest that the answer is that there probably would not have been, because he was, in the phrase sometimes used by lawyers, the sine qua non.

He was the essential factor, he was the major force, the prime mover, the person without whom nothing would have happened. So, that forces us to ask ourselves whether or not -- if a conspiracy did exist, one in which he played the dominant part, in which he took the most active role -- then was it not a conspiracy actually initiated, not by the other defendants, but by the very government, itself? For throughout this entire case Pershing Gervais was nothing, if not the government's man.

But, remember the brilliance of this man, Gervais -- and I am not talking about his integrity and I am not talking about his character, but I am talking about his obvious brilliance.

I suggest to you that Pershing Gervais has demonstrated to you that he is a man brilliant enough to put together a conspiracy where none existed -- so that if there was one, unavoidably, it was a conspiracy put into operation by a man who was nothing less than the government's own agent.

So, if we look at this whole "conspiracy" with clear eyes, it becomes apparent that it really was very much the creation and property of the government just as Pershing Gervais was its own creation and property as its undercover agent.

There is another thing I want to remind you about with regard to the government's secret tape recordings and Gervais' conversations with the various pinball operators. It is always Gervais who is bringing my name up.

Not the pinball operators, certainly not me, but the government's own agent. It's always Gervais.

One pinball operator asks him a question, "what does Jim have to say about this?" "Well, I haven't had a chance to see him yet," is a typical Gervais reply, "I don't have enough information to go to him yet."

Another asks a question, "what does the 'Big Man' have to say about this?" Obviously, they and Gervais have had conversations before, and so we have another reply: "Well, I can't go to him with this small amount of money. Garrison is such a hog, you know." And, always it is Gervais -- on the secretly recorded tapes with them -- bringing up the subject of money for me.

Now, during these conversations, in which Gervais speaks again and again of me, dragging me in, hauling me in, and hustling them more and more and putting them together and calling and tracking them down and constantly pushing and pushing them for more and more money, the pinball machine owners -- although unaware that they are being secretly recorded by the government -- never have occasion to speak of any bribery relationship, of any relationship with me since 1962, when I came into office. It is always inference by Gervais. It is always inference by the government's own agent. That is the origin of it all.

Above all, I think you should consider as important the fact that all of these operators spoke to him so many times, and were recorded so many times,

and yet none of them knew what my opinion was concerning, say, the anti-pinball legislation which they were so concerned about. They certainly would know that if we had had a long relationship, or a relationship of any kind. They would have known a year before. They would know where I stood on almost anything. But, they didn't know at all.

The point I am trying to get across is that so much of the whole structure -- alleged by the government to exist -- grows out of the mouth of Gervais that you may want to give sound thought as to whether or not the entire conspiracy charge, in this case, did not grow out of the mouth of the government's chief witness, Pershing Gervais.

Now, there really -- and I cannot emphasize this too strongly -- there really was no reason for the pinball operators and owners to have to pay off any District Attorney in Louisiana, certainly prior to 1972 -- and that was shown to you by defense witnesses. The witnesses to this testified clearly. Not only Professor Leon Hubert, the former District Attorney, but other District Attorneys: Edwin Ware, the District Attorney of Alexandria, and head of the District Attorneys Association in Louisiana, my former top executives, my former vice supervisors -- all, one after the other, testified that prior to 1972, as a practical matter, District Attorneys in Louisiana lacked the machinery to be able to get at the pinball owners and the operators of the pinball machines. They simply lacked the machinery.

Now, most of the government witnesses and other defendants were in the pinball business -- and again, I remind you that under the law of Louisiana, pinball machines were not made illegal until 1972, illegal as such. They were practical businessmen. I think it's safe to assume that they had lawyers, that they had to know better than anybody that pinball machines have been in operation in New Orleans, in Louisiana, for thirty years or more. They had to know that there was no general immunity statute in Louisiana by which the District Attorneys could have given location owners immunity, unlike the federal government, which had such a statute. They had to know that the Fifth Amendment could always be effective as a bar to any State prosecution and they had to know, above all, that until 1972, under Louisiana law, pinball machines were legal.

The evidence in this trial, nevertheless, has shown that the hardest effort to get at the pinball operators was made by my office -- not by any other office -- but by my office, in 1969. The United States has not presented any cases to you, for example, in which the District Attorney of such and such a place did this in 1948 or '47, and over there they did this in 1963, and so forth and so on. The record shows that the first and only attempt ever made to get at the pinball owners was initiated by Jim Alcock -- who at the time was my chief assistant.

My former chief assistant District Attorney, Jim Alcock, as he testified made the one concerted effort ever made in Louisiana -- an effort obviously

made with my approval -- to use the Grand Jury to get at the pinball owners. And he found himself blocked because he simply didn't have the machinery.

One owner brought his accounting books to the Grand Jury, and Jim Alcock happens to be an accountant, but Alcock wasn't able to do anything with the books because they led nowhere, and he could read books in an hour better than most of us can in a week.

The point is that, before 1972, the legal machinery for getting at the pinball owners just did not exist in the State of Louisiana. So, I suggest to you that it's a little bit too much to expect a man who does not have the machinery to do a particular job in the absence of the required machinery.

For example, physically we might have gone out and attacked the pinball machines with axes, but it would have been a matter of hours before we were enjoined by Civil Court because until 1972, the machines were legal and were not contraband.

And remember, when I was arrested in June, 1971, they were still legal. They were not contraband until the passage of a new State law in 1972. However, that didn't prevent the federal government from arresting me in 1971.

Nevertheless, in spite of the fact those machines were not contraband at the time, the testimony in this case shows that I already had initiated a major change with regard to aggressive prosecution of pinball operators -- a historic change. When I found out, after coming into office, that the custom had been to give the pinball machines back to the pinball operators even prior to trial, I brought an end to that generous custom.

The testimony shows that I felt that it was ridiculous that the Judges only were fining the defendants after we convicted them. It shows that I concluded that there should be more inconvenience for the pinball business because of the trouble the Vice Squad had to go to make the cases, so I issued the first order that ever stopped the property clerk's office from automatically giving these machines back to location owners as previously had been the case since the Criminal District Court was built.

Is that helping the pinball business? Did I really help that business in any way during my years as District Attorney? Was it really worth while paying money to Jim Garrison when he held onto the pinball machines, prior to the previous custom, when in '69, he sought to get at the pinball owners by means of the Grand Jury?

I would have to have been a mighty poor man to do business with. Certainly a very inept conspirator because -- after treating my "co-conspirators in such fashion -- if we had been conspiring, I would have found it very difficult in the future to find new industries or businesses that would want to participate with me in a conspiracy. They would have known quickly enough that as a "co-conspirator" I would hurt them far more than I ever would help them -- and that's a pretty fair description of my actual relationship with the pinball industry, as a whole. I hurt it a lot more than I helped it.

The evidence has shown that the machine owners simply could not obtain access to me as District Attorney. I did not have to prove that, because as I

told you, the government has to prove that I am guilty. I don't have to prove that I am innocent. Nevertheless, I proved -- with a series of honest, responsible and highly respected witnesses for the defense -- that the machine owners simply could not get any help from me at all.

Now, that's very important to keep in mind. If they didn't have to pay me, then why would they pay me -- except for the constant intercession of a man named Gervais, the government's man, collecting money in my name from every direction?

Everything that Gervais touched resulted in him getting some money. Anyone who had anything to do with him, lost something. I don't remember the number of that hotel room he operated from at the Fontainebleau, but I guarantee you that the Gideon Bible from that room has been gone a long time --

THE COURT:

Wait, I am sorry to interrupt.

Marshal, who was that?

If I can ascertain who it is, I will eject the individual.

The Marshal will try to keep an eye on the situation.

I am sorry to interrupt you, proceed.

MR. GARRISON:

Yes, sir.

Anything this man, Gervais, did, resulted in his ending up with money. At the same time, as the evidence indicates, every time he did something he

mentioned my name in such a way as to indicate, in some fashion, that he was going to carry this money to me or to a Judge or to some other law enforcement official.

Now, remember this factor, too, because it also relates to your getting a clear picture of the whole structure. Here is a man who did not dare to deny on the witness stand what was too well known. Not for a moment do I present this government witness as an example of truth and veracity, not in any way, but it simply was too well known (and he was sufficiently proud enough of it) so that he freely admitted having received money from gambling, money from bookies, card games -- "playing results", as he called it. In his game of "playing results", for example, if you had a son charged, and Gervais found out it was a weak case, he would call you and say he could get your son off for \$5,000.00.

So, here is a man who is "playing results" and collecting money for protection which he really couldn't provide (because, as he complained, as you heard from witnesses again and again, he could never get me to do anything for him). Here is a man collecting all this money for all these different things, and yet -- even though he boasted about it, and even though he testified as a witness for the government -- he could not look you in the eye and testify that one dollar, that a single dollar from all these other various enterprises ever came to me. Obviously, he kept it all.

With regard to the massage parlor about which I questioned him, he described himself as a "consultant" to the massage parlor, which so far as the evidence indicates, seems to be the nearest thing to a job he ever held after the day he left the district attorney's office. As a "consultant" to the massage parlor, he also got money in my name - and kept it.

But there was no evidence nor testimony of any kind that such money came to me. Yet, his testimony was, when he collected money in a pinball case -- since that is what the government's case is based upon and since he has been granted immunity by the government (as well as freedom from State prosecution) -- well, then, he just had to get to Jim Garrison, to give Jim Garrison the ninety percent due him.

Now, first of all, you sat here and saw that man testify, and you heard some of the things he said, and you must have a pretty fair idea of what his philosophy of life is. Can you imagine that man Gervais giving any human being ninety percent of anything? How would you like to have to hold your breath while you waited for him to give you ninety percent of something?

And secondly, I suggest to you that if, by some curious twist of the mind, he did decide that he would give me ninety percent of his pinball collections, well, then, why wouldn't he be giving me eighty or seventy or maybe fifty or forty percent or maybe just ten percent of his other businesses?

What was it about the pinball business for the government's star witness that made it so different from all the other businesses? What was it about

that particular business that caused him to feel: "I've got to go find "Big Jim" because I want to give him his ninety percent." I'll tell you what it was about the pinball business. It's because that's the one operation to which the government has worked so hard to connect me. That was the one operation, over which my office had some jurisdiction, however limited, which the government could describe as interstate in character -- thereby giving the government its claim for jurisdiction to prosecute me.

As a matter of fact, this man collected money for himself from so many directions, in so many ways, so fast, that even before he left town, after coming to my house on the night of June 29th (which was the night before I was arrested) he made one more collection -- even while ostensibly working for the government as an undercover agent -- from one of the massage parlors which he had paying him off.

So, I think it's safe to say that this man who speaks of being "reborn" had not quite yet been reborn. If he was enroute to being reborn, he was at most somewhere in the process of gestation, but he had not yet been reborn, because he had to stop and make one, final quick collection from one of his many illegal "short stop" operations.

This was the man who would have you believe that he would give me ninety percent of something that he collected. But this was a man to whom money stuck like glue. You have heard him testify in response to cross-examination. You have heard other agents describe his proclivities regarding

money. Ask yourselves if this is a man who would turn over ninety percent of what he collected to anyone.

Now, to go on to another matter, let me touch on some of the inferences made by Mr. Ellis, one of the government's attorneys in this case. Mr. Ellis kept repeating to you that Captain Soule was "in Garrison's office," much as if I had him put there. But, I call to your attention to the fact that the evidence clearly showed at that time that I had made the inquiry: "why was Soule, a Captain who used to be head of the Police Vice Squad, in the D. A. 's office? How were we able to get a Captain?" And you heard the answer that indicated that he had been transferred to my office from the police force because he had heart trouble, or something of the sort, and needed a desk job. However, the point is, I didn't bring him in there. He wasn't my creation and, as his own testimony made clear, he never really became a part of my office operation. By the time Soule arrived in my office he apparently had become part of a quite different kind of operation -- one which the government, using guilt-by-association, has tried to connect with me.

Now, another thing that Mr. Ellis mentioned was that the local federal agents in this case had impeccable reputations. He said these are not the type of men to frame anyone. He said, "I dare Mr. Garrison to look Dave Moore in the eye." Well, now I am looking Dave Moore dead in the eye, and I say, "Mr. Moore, I think that you are, indeed, an honest man and I respect you." The

point is that I don't feel that these particular gentlemen, sitting here before you, would frame anybody. That is not, however, the problem. The problem, I suggest, is with regard to the endless number of unseen federal agents who for three years constructed the false charges against me -- and this small army of federal secret police is not sitting here before you. They couldn't be. They wouldn't fit inside of the court room.

With regard to the role of federal agents behind the scenes, I remind you that we are dealing essentially with this unusual man named Gervais, a man who is capable of manipulating everybody from an experienced federal agent to a district attorney who might be naive in some areas to the very federal government, itself, in Washington.

Who do you suppose got Gervais the job with General Motors of Canada -- a job for which he had to work several times a week for five to twenty minutes, and for which he got \$22,000.00 a year? Do you think Federal Agents Puckett or Lanoux or Dave Moore -- sitting over there -- got that job for him? It's no reflection on them to say that they can't get someone a job in Canada, for \$22,000.00 a year for working a few minutes a week. As a practical matter, if they could, they probably would take the job, themselves, and that's no reflection on them.

Now, the point I am making here is that obviously there had to be someone in this case at a higher level. So, my reply to the United States Attorney is that in no way do I insinuate that there was any sort of attempt to frame me or

to get me on the part of the federal agents seated here in this court room. Your common sense should tell you that the federal agents who handle the dirty work behind the scenes are not the ones they later send into the court room for you to see.

Another thing which revealed the special interest in my case in Washington, was the admission by Gervais, on cross-examination, that former Attorney General John Mitchell had sent him a message of thanks for a job well done.

And so the appreciation of his government went to this most unusual man, Pershing Gervais, a man whose only god is money, a man without a god, but not a man without a country, for his country has done well by him and knows his worth.

But just how did he come to be working with the government? Do you recall my questioning him about the inquiries made in '68 and '69 by the Internal Revenue Service, and his answers to those questions?

You will recall in the cross-examination that Mr. Gervais did admit that he had been questioned by Internal Revenue Service agents, that he did not allow them to examine his safety deposit box, that he did not allow them to examine his records, that he would not sign any waivers of any kind. I asked him if he had ever had subsequently, and he said no. But, obviously, some form of inquiry had begun, as the evidence indicated, into his income tax situation.

Now, I've told you before of the Gervais operation -- which ranged from collecting money in the name of protection, to collecting money when betting

results paid off -- and I suggest to you it's not too hard to conceive such a man would short-stop money whenever he had the opportunity. And in the course of the passage of years of short-stopping money collected in the name of someone else, it's unavoidable that such a man would acquire a great deal of money.

So, he was questioned by the I. R. S. , and he failed -- initially, at least -- to cooperate with regard to questions about his I. R. S. exposure. But remember, I am talking now about the summer of '69. However, in late '69 or early '70 we suddenly began to see, in the evidence, the first signs of cooperation by Gervais with the government.

Somewhere between the summer of 1969 and his arrival in Canada in 1971 to take over the field management for a division of General Motors, a marriage of some sort obviously was consummated between Mr. Gervais and the federal government. This was what used to be known in Europe as a marriage of convenience. You can see, from the charge against me, how convenient it was for the government. And obviously it was convenient for Mr. Gervais because, as he testified the other day, after revision of his tax two years ago, he still owed \$8,000 to the federal government -- a small enough sum considering the extent and variety of his activities. When I asked him when the last demand was made upon him by the government, he replied that there hadn't been any demand.

I am not telling you that the next time you send in a tax return, that you should refuse to send along the money, but I just want to ask you one question.

If you sent in a tax return next year and you failed to include your payment with the tax return, just how many days do you think it would be before you heard from Austin, Texas. What would you guess: fourteen days, seventeen days? Do you think you would be lucky enough to get two years of silence from the I. R. S. ?

Yet Gervais never has been asked to pay the \$8,000. Obviously, at some point before he became its witness that marriage was consummated between Mr. Gervais and the government.

Now, even after that marriage, this man continued to play the field. Even after he began working for the government, he still sought money from different directions. Even after his return from Canada, he met with the lawyers for some of the former defendants in this case. You heard the testimony of Mr. Johnson, a highly reputable attorney. Gervais wanted a \$2,000.00 cover charge merely to talk to the lawyers - and that was for openers. Of course, he didn't get it, but he asked for it.

Mr. Johnson also testified that Gervais asked for \$100,000.00 in exchange for which he would provide testimony and tapes which, he indicated, would free all of the defendants in this case. Of course, this offer was not accepted. His own attorney, Russell Schonekas, according to the testimony of attorney Guy Johnson, was shocked and said: "My God, Pershing, are you saying you would commit perjury?" And I think you remember the answer well enough so that I

won't even have to repeat it. The answer was in the affirmative, to say the least.

I suggest that it will be many years before you see a greater example than Pershing Gervais of the fact that you cannot serve both God and Mammon.

I ask you: can you trust the word of such a man whose only God, by his own word, is money? Can you trust such a man to be one of the crucial factors in deciding whether or not to send other men to the penitentiary?

Incidentally, in that regard, when I asked him if he expected to be prosecuted, he replied no. And this is a man who, for two years, has owed \$8,000.00 to the Internal Revenue Service and never been bothered once. Can you really allow yourselves to vote for a conviction when any part of your decision is based on the testimony of a witness like this?

On the other hand, this is not a man to be underestimated. The testimony in this case shows that from his headquarters at the Fontainebleau, at least until he got into his dilemma with the Internal Revenue Service, he was involved with so many enterprises that I won't even begin to name them.

However, I wanted to call to your attention something that seems to have been overlooked in the initial opening arguments of the government. There had been initiated, however low the key, an inquiry by my office into Mr. Gervais' activities, as testified from the witness stand by both my Chief Investigator Louis Ivon and Investigator Lynn Loisel. As a matter of fact, Mr. Loisel was able to identify specific locations of the Gervais shake-down operation which

he had found. And Mr. Ivon was able to tell you that I also had asked him to look into the activities of former Captain Soule and Sergeant Frey -- who were associated with the activities of Gervais -- and see what he could find out about them.

Now, I will tell you why this is important. I asked Gervais, on cross-examination, if he remembered a conversation with Alexander Brodtman, an Internal Revenue Service agent, and James McCormick, a special agent with Internal Revenue Service in May of 1968, and he said he remembered it at the Fontainebleau; I then asked him: "Do you recall indicating to them that Mr. Garrison was an individual who did not care too much about becoming wealthy", and "if the government investigation showed that he owed taxes, it would be because of Mr. Garrison's carelessness"? The reply of Gervais was that he recalled the general conversation and his answer to my questions was "yes".

So, we know that as of the spring of 1968, this man had not yet consummated his marriage with the federal government, and had nothing to say with regard to me, that touched on pinballs or anything else, and yet, at this time, he was now in his third year since he had left my office. It was sometime the following year, as I think the testimony indicated, that the Internal Revenue Service inquiry of Gervais began and while he still would not reveal any information about himself to the federal government, otherwise his relationship to the government grew very warm -- and the romance began.

Now, consider the essential logic, if you will, of the position of the government in this case. It chooses the unbelievable testimony of a man who admitted what you might call "hustling" at the Fontainebleau, making his money the easy way, a man who another witness actually saw with a box of diamonds, a man whose occupation, if he ever had any during the years he left my office, is still a mystery, an admitted shakedown artist who would not let the Internal Revenue Service even see his safety deposit box, a man who, by his own admission, cannot be believed under oath -- and then consider that the government has sought to make you think, by repeating and repeating his testimony, that a district attorney, whose honesty has never publicly been questioned before, is a crook.

It seems to me that there is something in that set of circumstances that is reminiscent of using the wolf to catch the sheep.

I suggest to you that there is almost no serious action which you would want to take on the word of a Gervais after you heard him testify. I suggest that when you reflect on his own testimony, and on the testimony about him, you will have to conclude that he is like the man whose word was so unbelievable that, when he wanted to call his dog, he would have to go to his neighbor and have the neighbor call his dog for him.

I suggest to you that you will want to put very little stock in this most important of all government witnesses.

Why is it that my conviction in this case and the conviction of the other defendants appears to be so desirable to the federal government in contrast to the obvious misdeeds of Mr. Gervais, who doesn't fear prosecution? His misdeeds are recited and boasted of openly. Some of them are virtually legends and yet he is the star witness for the government and we are the defendants.

I think it's an insult to your intelligence to present Mr. Gervais as a major witness in a case which may involve the freedom of anyone.

Now, the government's evidence; if we may call it that, also has another curious aspect. It presents us in effect with a number of conspiracies, which I won't bother to itemize or go into, but one of the problems is simply this: the more you consider the government's evidence the more you see of one apparent conspiracy over here and another one over there and another constellation over here, and another constellation over there. I suggest you will find yourself saying that the only thing the evidence clearly shows is that there was a major shakedown operation going on at the Fontainebleau Motel, and that the central character in the shakedown operation was Gervais -- the government's star witness. And with regard to this shakedown operation I think it's certainly fair to view the other two defendants, these two men here, as victims. Who are the victims in this case, after all? Who are the sheep and who is the wolf?

I ask you to reflect on the role of Mr. Gervais in this case, and I ask you to question yourselves when you deliberate and ask if it isn't a fact that,

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whether inadvertently or not, the government has ended up proving more substantially that a great shakedown operation existed than it has that I participated in any sort of conspiracy with these other two defendants here.

Another thing for you to remember in this case is that the government's conduct has been particularly curious.

Let me remind you of some of the evidence in that connection. You will recall that -- without getting into the rather complex question of who made the decision and who first wanted to go to Canada -- under cross-examination, Mr. Gervais admitted that he changed his last name to Mason in connection with his going to Canada.

He admitted that he had a son named Darryl Lee and that Darryl Lee was born in New Orleans, in April of 1966. Mr. Gervais admitted as well, that his son's name initially in New Orleans, when he was born, was Darryl Lee Gervais. Mr. Gervais admitted that he also had a daughter Jeannine Marie Gervais, who was born in New Orleans.

But in moving to Canada Mr. Gervais had changed his name to Mason, and therefore he encountered a problem when it came to sending his children to the schools in Canada because they required birth certificates. The required birth certificates had to come from here where they were born, but to get them from here would have indicated that his children were not named Mason at all but that their name was Gervais.

So, what he needed was some birth certificates which indicated that their name was Mason. And these -- according to testimony of the star witness of the government, Pershing Gervais -- were provided by the Justice Department.

First of all, it provided him with a Certificate of birth indicating that Jeannine Mason, was born in Phoenix, Arizona in November, '56.

And remember, Mr. Gervais admitted Jeannine was born here. Now, at the bottom of that, we see a signature of a man who purports to be the State Registrar, another signature of a person who purports to be the Director of Records, and another signature of the Clerk. So, we have to ask ourselves, is this four forgeries or just three -- how many is it? There are three signatures on it which cannot be real, the document is a forgery, and it was provided to Gervais by the Justice Department to help him leave the country. And I want to give it to you, if I may, so you can look at it. (Counsel hands the document to the Jury.) This is for Jeannine, the little girl.

THE COURT:

Now, wait just a minute, now. You are going to have to stop while they are looking at the document. You are going to give them both of them?

MR. GARRISON:

I am going to make one line and hand this one to the other row, sir.

THE COURT:

Oh, all right, go ahead.

MR. GARRISON:

I am going to give the second row the birth certificate which indicates that Darryl Gervais, now his name changed to Darryl Mason, was born in the State of Delaware, which also is a forged birth certificate. The back seat -- may want to pass on to the front and vice versa, when you finish. (Whereupon, counsel hands the document to the jury.)

According to the testimony of the star witness of the government, Mr. Gervais, these forged birth certificates were provided for him by the Justice Department. If the Justice Department will forge the birth certificates of two infants, if the Justice Department will commit certain crimes, what is there that it will not do if it desires strongly enough, and the objective is interesting enough? What is there that it will not do?

Now let's go to the letter written by John Wall, the attorney in charge of the organized crime and racketeering field office of the Department of Justice which was written on September 28, 1971. It was written to Mr. Gervais, who at the time was in Canada.

In this letter to Mr. Gervais, signed by John Wall, it says: "you agreed that during the period September 1, 1971 to August 30, '72, you would accept employment commensurate with your ability -- commensurate with your ability at the salary offered and that the Department of Justice agreed to supplement such income up to \$22,000.00 a year. "

Now, at that point, let me remind you that during the cross-examination of Mr. Gervais, when I asked him what qualifications he had to be the field manager of General Motors of Canada up in that area, he said he had none, initially, but he took a course when he arrived. And I when asked him how long the course took, he said two weeks. So, after two weeks, he was qualified for the total of \$22,000.00 a year.

Now, the next to last paragraph, which is also relevant to this case, states: "It was further determined on September 8, 1971, the subsistence is paid on condition that you not re-enter the United States without the prior approval of the Criminal Division -- that you not re-enter the United States without the prior approval of the Criminal Division and that all future payments will be cancelled and the Department of Justice will be relieved of any responsibilities if this condition regarding re-entry is breached."

I just want you to visualize yourself as the defense in a case like this, where a man has changed his name and moved to another country and has now been sent a letter with that exile provision in the next to last paragraph. And imagine, if you will, as a defense attorney, trying to locate that man with regard to preparing for trial.

Now, you remember that I questioned Mr. Gervais about an interview which he had with Rosemary James. I asked him, first of all, if he remembered the interview -- which occurred in Canada, in May of 1972 -- and he said he did.

And then, I asked him if he thought he could remember whether or not he had made certain answers if they were read to him, and he said that he didn't know -- that he would have to find out when they were read. So, I asked him these questions, in effect, by reading the dialogue:

"Rosemary James: You were forced to work for the government?

Gervais: But more than that, I was forced to lie for them, that's a better description.

Rosemary James: What were you forced to do?

Gervais: Well, it became clear in the beginning, it was obscure, it was always hence, you know, what we want, you know what we are doing, see."

Midway through the thing, they identified Rosemary James.

"Gervais: Through the beginning of harassment until that time where I, for the want of a better description, was seduced by the Justice Department, you know, if I could be seduced, as if there was some question somewhere in there, it became clear that they were really interested in but one man, Jim Garrison, and in their minds, they knew that I was the guy who could get him.

Are you saying you got him?

Oh yeah, no question about that."

In response to that one, he said that he didn't remember it directly, as I recall, although it was familiar enough that it could have taken place.

I asked him if he recalled this part of the dialogue:

"Rosemary James: You are giving me a lot of double-talk here as far as most people are concerned, did they want to investigate people in the pinball, did they want you to investigate people in the pinball industry and Jim Garrison?"

Gervais: They wanted Jim Garrison.

Rosemary James: What do you mean when you say they wanted Jim Garrison?

Gervais: They wanted to silence Jim Garrison. That was their primary objective, because if that were not true, I would still be in New Orleans. If that were not true, I would still be in New Orleans.

Well, who decided to go to Canada?

Rosemary James: Well, now, are you saying that you participated in a deliberate frameup?

Gervais: A total, complete political frameup, absolutely."

Now, I asked him on the stand if that were true, and he answered, in effect, that he would prefer to say whether or not he felt the statement was responsible or, irresponsible at the time. I don't think there is any dispute about that.

And in this case, his testimony was that now he felt, looking back, it was an irresponsible statement. Again, I let you be the judges of that, because you

are the judges of the fact.

But, you might want to decide whether or not the statement, in fact, was true. If it was true then is he saying, now, before you, under oath, that it's not true? Or, if it were not true, then, is he saying now, that it is?

But, it's just irresponsible, he says now. You have heard the concepts and their interpretation as to what Gervais meant, here before you, and what he meant in the interview. I leave up to you.

But, there seems to be a slight variation, and I suggest that you might want to take that variation into account in evaluating his veracity or the likelihood that he is telling the truth. Here is some more.

"Rosemary James: What you are saying explicitly is that the government's total case against Jim Garrison is a fraud?

Gervais: No question about it. Anything founded and based purely on politics can't be anything but fraud.

Rosemary James: It's a whole lie?

Gervais: The entire thing."

Now, again, in fairness to the other side in this case, I want to emphasize that his evaluation of that last point was that, in retrospect, he regarded that as essentially an irresponsible statement. But, having done that, I want to remind you of the testimony of the attorney, Guy Johnson, on the last day in this court, concerning the seriousness with which Pershing Gervais regarded the taking of

an oath. You may want to measure that by the measuring stick giving to you by attorney Guy Johnson in his testimony on the last day of the trial.

I come now to a new area, the subject of the government's secretly recorded tapes. The magic tapes.

As you will recall, Mr. Ellis -- one of the government's attorneys -- relied heavily upon Officer Nash's conclusion that the Government tapes were not doctored.

I ask you to remember that when Officer Nash -- the government's expert -- testified, he let you know that he was the man who never made a mistake. In effect, he indicated that he had handled 3,000 decisions in this particular area without making a mistake. I'll let you draw your own conclusion on that, because I really think a comment is unnecessary.

In contrast, I want to call your attention to the testimony of Dr. Gerstman, the expert witness produced by the defense.

He testified, with regard to the government tape which he studied -- which is the now famous S. R. 7 tape -- that he found indications that this tape had been fraudulently fabricated.

In his cross-examination the United States Attorney asked him, "Why did you stop after you found three instances of fraudulent fabrications in the tape?" and Dr. Gerstman replied, "Because it wasn't necessary to go any further."

Now, that might be confusing to you in a sense, but let me see if I can give you a perspective which will help you understand the point which I feel he was making.

If you were about to take an airplane trip with your family on a four-engine jet, and you happened to look at the first engine and noticed it was about to fall off, I don't think you would say to your family, "Well, the other three engines are probably okay; let's all climb aboard."

The point is, you wouldn't have to look any further.

If you were to find a man laying on the ground, not breathing, and you found three bullets in his head, there would really be no great point in examining his ankle and his shinbone to see how many others there were, because when he's dead, he's dead.

When there's a bad engine, there's a bad engine.

And when there's evidence of this fraudulent fabrication, then there's fraudulent fabrication -- and I suggest to you that that affects necessarily, as a matter of logic, the other tapes too, although I remind you, of course, that Dr. Gerstman is a professor in psychology and speech and hearing sciences at the City University of New York, and I suggest to you that it is not without significance that after having been presented this expert -- who in effect discredited the tape -- that the Government did not reply with an expert to say, "I am a tape expert."

I suggest to you that the testimony of the last tape expert you heard in this case is clearly unrebutted by any other tape expert of any kind, and I ask you to take this into account in your deliberations.

The price we pay for progress is a high one, and as each of us has probably learned more in the past decade than people learned in the preceding 10 or 20 years, the price is a high one. If you live in cities, you have smog. Our cities are becoming parking lots, one thing after another, and I suggest to you that one of the prices that we pay for progress, in our day and time, is the secret, electronic tape recorder in the hands of the Government.

Now, let me ask a question, and I want you to ponder it if you will.

In the last year or six months has any conversation of yours been secretly tape recorded by the Government, federal or state?

Ask yourselves: Have any telephone conversations made by you been secretly recorded by electronic eavesdropping equipment? Ask yourselves that, if you will.

All of us occasionally say things which, in retrospect, we wish we might not have said. Sometimes we even say them about friends, in a moment of irritation perhaps, perhaps foolishness.

But the point is that we all have one thing in common. Every one of you sitting there, every person in this courtroom, and me, certainly, has one thing in common, and that is, being human, we are imperfect. And one of the results of such imperfection is that we occasionally might say things in private conversation that we wouldn't say publicly. We do things like this because we fall so far short of being perfect. There is no perfect person in this courtroom, in this city, in this country. It has been nearly 2,000 years since the last perfect

man was on this earth.

Now, ordinarily, your imperfection and mine are not of that much concern to us. But they can become of great concern to us if our imperfections -- such as what we think are casual, private conversations -- start to become secretly taped, and recorded for posterity, by the federal government.

The great danger of our being secretly recorded by any government -- whether the State government or the Federal government or any government -- is not merely in the information sought by government, as it would contend, but in the other matters which may come out during the indiscretion of our conversations -- whether those indiscretions are the government's business or not. The real danger is not so much in the substance of what the government might discover as in the loss of your privacy. Yet our privacy is supposed to be guaranteed by our government -- not invaded by it. You will recall that, at the outset, I reminded you of the Bill of Rights in our Constitution, which is our only protection against the government. One of the rights supposed to be secured by the Bill of Rights is our right to privacy. You may want to keep this in mind during your deliberation, because the right to be free from intrusion by the government is involved in this case.

The case for the defense can be summed up very briefly.

I have finished my analyses of the government's case. It would be enough now merely to point out to you that I don't have to prove myself innocent, and

the Judge will charge you to that effect. Nevertheless, the defense did present evidence which I will very briefly describe to you.

But I want to sum up my review of the government's case with a sentence. I do not believe the government established, nor even came near to establishing, that a conspiracy of any kind existed, which involved me or, for that matter, any of the defendants in this case.

On the other hand, with the evidence presented by the defense, I showed you that my office did everything possible, and went farther than anyone had ever gone before, with regard to the pinball operators.

Former District Attorney Leon Hubert pointed out that there were no real mechanics, and he's a professor of law at Tulane -- there was no legal machinery to enable the DA to get to the operators until 1972 -- and yet I was arrested by the federal government in 1971.

Mr. Hubert also testified about the discretion of the District Attorney, and you will recall that he spoke of the substantially wide latitude, meaning that the District Attorney was the one in the particular parish who made the decision when to prosecute and what to prosecute -- the point being, that the District Attorney in the particular parish has a right to set priorities.

You will recall the testimony of my Chief Assistant DA, John Volz, who said that the highest priorities in our office were with regard to cases of crimes and violence. I set those priorities, particularly as to murder and armed robber

cases in which there were victims.

That did not mean that we ignored, for example, pinball payoff cases, or victimless crimes. We sought, and I think the record shows it, to prosecute in every area, but nevertheless we had our priorities.

Now, my priorities may not be the same as those of the individuals in the Federal Government who felt I should be charged, but the fact remains -- and the record supports it -- that the priorities that I chose for my office were prosecution and conviction where there were crimes of violence and where there were victims.

We presented the Judges, and you will remember their testimony, which was to the effect that there was vigorous prosecution.

I presented former vice chief after former vice chief from my office, and their testimony, in effect, was not only that I never asked them to do anything improper ever in the pinball area, but that I never asked them to do anything improper in any area of vice.

The indictment charges that I permitted the pinball owners to operate free of substantial law enforcement interference. With that in mind, let me remind you of the testimony which indicated that I was the first DA, so far as the record shows, to hold the machines instead of giving them back.

Let me remind you of the testimony of Jim Alcock, the Chief Assistant, who in 1969 launched a Grand Jury investigation into pinball operations in an

attempt to get to the pinball owners, and he too testified, in effect, that he found himself blocked by inadequate legal machinery.

I also remind you of the 1970 pinball investigation, which was begun by Assistant District Attorney Alford, in which an attempt was made to get to the owners, and any witnesses the Grand Jury wanted to hear were called, but again the District Attorney's office found itself blocked, because 1972 had not come.

Remember that 1972 brought two things. It brought to the DA's of Louisiana for the first time the right to grant general immunity, which we had not had before, with which you can get a location owner to testify against an operator. Now, the Federal Government had that in '71, and they had it before, but we did not have it until '72, until after I was arrested. Secondly, the Louisiana Legislature in '72, for the first time, made pinball machines themselves illegal.

Until that time, we also were stuck with the fact that the owners and operators of the machines were, in effect, in a legal business. We did not have the machinery to show them to be otherwise, but nevertheless we tried.

So instead of helping the pinball operators, I went further than any DA that's testified, or was referred to in the record, in trying to get to the owners.

As a matter of fact, you may recall the testimony of the Chief Assistant DA of Jefferson Parish, who, to my surprise, testified essentially that there were plenty of pinball machines over there for nine years before 1972.

I asked him whether or not his office had ever prosecuted an owner during those nine years, and he couldn't recall, and then, on the spur of the moment, I asked him if he could recall whether his office had ever prosecuted a pinball payoff, and he couldn't recall that either.

So I suggest to you that that particular metropolitan part of our city actually, in contrast, showed that my office was doing more than that office was, because the testimony of witness after witness was that my office prosecuted effectively wherever there was evidence of pinball payoffs, and that's all that we had then that was a violation of the law.

So, in summary, when you hear the Government say, or imply, that I have in any way helped the pinball industry, I suggest to you the fact that it is quite the opposite.

Again and again, there are two patterns that come out in this case. With regard to pinball operations, my office has been diligent and steadfast and consistent. With regard to Pershing Gervais, he consistently complained because he never got anything from me.

I knew him well enough, and the record shows that, to talk to, but I also knew him well enough, and the record shows this too, not to do anything for him. You will find during your deliberations that his complaint was that during those years he was out of the office, he could never get me to do a single thing for him, and I might add that that evidences a rare instance of Gervais telling the truth.

Now, as a part of the New Orleans District Attorney's office for 16 years, I believe in law enforcement, but I believe the law can be enforced without government encouragement of treachery on the part of individuals and without the employment of deceit and without violations of the law by law enforcement agencies themselves -- such as you have seen repeatedly done by the Federal Government in this case. Furthermore, the law must be applied equally and not applied selectively. As you know, there are a number of District Attorneys in Louisiana, and in Louisiana there have been many pinball machines, but I ask you to reflect back in your memory and see if you can recall any other District Attorney in Louisiana being prosecuted by the Federal Government in this regard.

The Declaration of Independence, by which we declared our freedom from tyranny, could become meaningless, if we let it. We may have fought through the entire Revolutionary War for nothing. We may yet end up with tyranny ourselves, if we are not vigilant. The ones who can protect us best against the return of tyranny by government are the citizens of this country -- the citizens who are careful and diligent about choosing the right people to represent us in Congress, so that a certain amount of control can be maintained over the powerful bureaucracies of our Government in Washington, and the citizens who serve on juries, such as you are doing now, right here.

In that regard, when you reach a decision in your deliberations and you feel that your conscience has played a major role in your evaluation of the facts,

Not "hear"
I wasn't hearing anything
I corrected this before.
The word is BEAR

I ask you to hold fast to the way your conscience dictates. Your own conscience, if you hold fast to it, could be the very thing which prevents the return of tyranny to this government.

One final point about the verdict:

The system we have in America permits only two verdicts, guilty or not guilty. They have a third verdict, in Scotland, which is "Not Proven", which means something that's neither one or the other. They do not have that in America.

They also do not have a verdict in America called "Innocent".

Ideally there might be a system under which you could each conclude, "Guilty, "Not Guilty", or "Innocent", but there is no way to find me innocent. The law does not allow it. There's no machinery for that.

The charge that I have had hanging over me for the last two years is not necessarily undone by the verdict of "Not Guilty", but it's certainly better than "Guilty". If there were an "Innocent" plea, I would be asking you to find me innocent, because I have already had to hear ^{hear} for two years the knowledge that my own children must have some doubts about my innocence.

The poet, Browning, once said something which applies to what happens when -- however unintentionally -- you might let yourselves allow injustice to come to pass, to allow an innocent man to be convicted. He said:

"One more devil's triumph and sorrow for the angels. One wrong more to man."

Let me close, and thank you for being so patient. I do not ask you to render a verdict of innocent, because you cannot. But I do ask you to find me not guilty.

Thank you.

COURT PAPERS

Closing Argument of

Jim Garrison,

September 25th, 1973

UNITED STATES OF AMERICA

VERSUS

JIM GARRISON ET ALS

Closing Argument of

Jim Garrison,

September 25th, 1973

Case Number 71-542

10:00 A. M.

THE COURT: Call the jury.

(Jury returns to the courtroom)

THE COURT: Proceed.

MR. GARRISON: May it please the Court, ladies and gentlemen of the Jury:

This is a new experience for me. I have never been in court as a defendant before. I have been in court, of course, defending as lawyer, but this has been the first time I have been in court as both a defendant and a lawyer. I hope I have done as well for myself as I might have done for another.

I hope you will be patient with me, because understandably I will be somewhat more involved in this particular case since it concerns me. As a lawyer; I always have been concerned about the outcome of my client's case, but I find that in this particular case I am even more concerned than ever.

It has been two years now since I first was charged by the Federal Government in this case, two years during which I have been conscious of the reflection cast upon my office by the charge.

It has been a long two years, because it has not been merely a case of my being conscious of the shadow cast over the office which I worked long and hard to build. It also has been a long two years because throughout that time I have had to live with the fact that I face the penitentiary.

This is a federal charge in Federal Court, and whether or not I go to a federal penitentiary well may be in your hands.

I would like to quote a few lines from the Declaration of Independence, and then I will show how I think they apply to your role in this case -- more than that, to your role as a citizen in this Government --but particularly to your role in this case.

The lines will be familiar to you.

"We hold these truths to be self evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. "

Now, at this point I want to call your attention to three things:

This is really the first legal document which actually refers to the origin of our country, and at the very outset, it makes it clear that this country is based on the belief that men are created by God, and that this country is structured and created as a country with a belief in God, and secondly, the point is made in the first few lines, that to secure these desired rights -- in the words of Thomas Jefferson -- governments have been instituted among men, because without governments no such rights could be secured.

In a moment I will refer you to the problem of keeping these rights after government has arrived, but at the outset of the Declaration of Independence it

makes clear that we must first have government to secure these individual rights in the first place.

But in the final analysis it says, "These governments derive their just powers from the consent of the governed."

Now, remember that at the time Thomas Jefferson wrote this Declaration of Independence, a revolution had begun, a revolution in which the American colonies were in full rebellion against England. England was already one of the world's great democracies, but we had learned the hard way, as a colony, that even a great democracy sometimes, in some ways, can fail to protect the rights of all its citizens.

The result of that knowledge, that there has to be some actual protection for the citizens against the government itself, was the addition of the Bill of Rights to the Constitution.

When the Constitution was drawn up, at first, it lacked the Bill of Rights, but the attention of the people was called to the fact that no matter how great the government is -- and I'm sure that every person in this room feels that this is the greatest government in the world -- it is possible for individuals to lose their rights because of the very size and power of the government. And that was the reason for the Bill of Rights becoming part of the Constitution.

As a result, the Constitution to a great extent is a document designed to protect the individual citizen from the government.

Now, how does that machinery work, as a practical matter?

In a general way, with regard to our government in Washington, it works through the representation of the American citizen in Congress, particularly in the House of Representatives, where there is an election every two years.

Because of our system of checks and balances, when something does go wrong with another part of the government, whether it's the Executive branch, or whatever part, Congress has the power to participate, and to do something about it. To some extent you have seen that happening recently.

When that is happening, when Congress is reacting in that way, you have your own representatives seeing to it that your government gets back on the track where it belongs. And that is one way in which you play a role in your government, although it is a very indirect way.

A more direct way in which a citizen of this country plays a role in the government, and one of the most responsible ways, is when he sits as a member of a jury, in judgment on a man charged with a crime.

There is no more responsible position in this country, no matter how lofty the office might be, than to be a juror and to pass judgment upon the question of whether a man may remain free or is to lose his freedom.

At the outset of my talk to you, I wanted to touch upon your functions as I saw them, and upon the tremendous responsibility you bear -- and upon your

role, upon your role as insulation against the very power of government, itself.

You have a role which you may perform in two different ways. In one case, for example, it may be clear that the law clearly has been violated and it may have been proved beyond a reasonable doubt that the law has been violated -- and your role then is to help enforce the law.

In another instance you may find that there has not been shown evidence of guilt beyond a reasonable doubt.

Perhaps, in such a case, you might find that there appears to be some evidence, but not evidence beyond a reasonable doubt -- and when you find that and you let your conscience hold firmly to your conclusion that there has not been shown evidence of guilt beyond a reasonable doubt, then you act as an insulation, and a necessary insulation, between the tremendous power of our great central government and the relative weakness of the individual.

So I can't tell you how important you are, not only to the government, but to the person who is prosecuted.

Essentially the Government's case against me, so far as I can see, consisted of the presentation of five types of witnesses, or types of evidence.

First of all, the presentation of pinball location owners; then the pinball operators; then former Captain Soule; then the long presentation of what we might call the "magic tapes", and then there was the man named Gervais.

That essentially was the government's case, so far as I see it, But I suggest to you that, step by step, as time went on, the Government's case faded away so that we are reminded of the smile on the Cheshire cat in "Alice in Wonderland". The cat faded away, as you will recall, until nothing was left but the smile.

I suggest to you that, after you examine and consider the evidence in this case, you will find that the Government's evidence against me has faded away, leaving nothing but the charge.

Then I suggest that you will want to do something about that, because that will be within your province.

Location owners testified. I think it's fair to state that the average observer could see that they were nervous, concerned men, but they testified truthfully.

And one after another of those witnesses testified that he never knew me, nor ever had anything to do with bribing me.

Then, one by one, the pinball operators testified. One of them I had met before, and yet, as the evidence showed, mistook him for someone else. I'm not the greatest politician in the world when it comes to recalling names, so I had called him "Jimmy" a few times, and he stopped and explained that his name wasn't "Jimmy" and that his name was Louis Boasberg -- and that was the beginning and the end of all of our conversations over the years.

I had met a second pinball owner, John Elms, once when he arranged through his lawyer, as he testified, to give me a campaign contribution.

At that time, you will recall, the pinball machines were not yet illegal. He also had given, he testified, such a contribution to my opponent. Outside of one or two times in that campaign, only one of which involved that contribution, I never saw him before and I never saw him again, until this trial. As he testified, I had never seen him before that contribution and it was quite open and obviously not intended as a bribe in any way. And, as I have pointed out, I never saw him again.

So those are the two of the three pinball machine owners that I "know", if you want to call that "knowing" -- one, an operator with whom I had a conversation in the hall and another whom I casually had met twice in my twelve years in office.

I also happen to know Mr. Callery, as a casual friend, something I'm not ashamed of at all. However, beyond that, if you go back to the testimony of all the rest of the pinball operators, you heard them say -- one by one, one by one -- "I have never met Mr. Garrison before; I have never bribed him; nor have I bribed his office" -- one after the other.

So, finally, the Government's case came to Captain Soule. Soule, you may recall, not too long ago was among the defendants about to go to trial. But since then he was severed from the other defendants and he became a witness for the government.

In the course of his testimony, Captain Soule produced a suitcase containing \$63,000.00 -- a rather dramatic moment, without any question, but

not necessarily a moment reflecting in any way on the government's charge that I am guilty of something. A dramatic moment, but not a moment with logical imperatives which affected my case in any way.

Now, incidentally - before I go any further - let me make one point so that you may see more clearly your role in judging the facts in a case like this. I still have a bit to say to you and I will be followed by the United States Attorney, Mr. Gallinghouse. This also may help to minimize the occasional side battles which sometimes occur during closing arguments.

Lawyers usually try not to interrupt during an argument, unless they really have to. Even though you may have seen them battle vigorously earlier during the trial, it's something of a custom to try to minimize interference with an attorney's argument at the end of the case.

But, sometimes a lawyer arguing a case may slightly misstate the facts, as he recalls them or, the testimony of a witness. Sometimes it happens that one lawyer's recollection is not precisely the same as the lawyers on the other side.

I just want to emphasize that in those instances, the judgement which counts is yours. You are the determiners of fact in this case.

Not even the Honorable Judge, who has presided over this case, and sought to make it as fair a trial as possible, can determine the facts. Only you, only you. And that's why, in a sense, you have more power to do good,

more power to bring justice into play while you serve as jurors than you will ever have all the rest of your lives.

For that matter, during the time you serve as jurors on a case and pass on a man's freedom, you really have, for that brief period, more power than anyone in the entire government.

Because you alone can decide what the facts are, and your decision as to what the facts are is final.

It is possible in some cases for a reversal to occur in a court where, perhaps unconsciously, a Judge has made a ruling which conflicts with the law, or sometimes the law is in change or in the process of change, and when the Judge makes the ruling under the present law, it may actually be perfectly accurate. But, the law is a vibrant living thing, and it changes quite often, so that sometimes such a change in the law occurs and you have what you sometimes have read about: a reversal.

But such reversals occur only with regard to questions of law. And quite often, you have cases where there are no mistaken rulings by the Judge, where every ruling of the Judge turns out to be a correct ruling, where there is no legal error. In those cases, there is no appeal, because an appeal is only based on a mistake of law.

What I am saying now is something which may not have occurred to you before. From your decision as to the facts of this case, there is no appeal.

And there will never, never, never again be an appeal during the rest of my life, or the life of Mr. Nims, or Mr. Callery -- because there is no appeal from the decision you will make concerning the facts.

So, that's why I urge you to use your conscience, when you meet to consider this case and to make a decision, because there is nothing a lawyer fears -- most particularly a lawyer who is representing himself -- than a case in which all of the Judge's rulings, in retrospect, turn out to be correct, therefore, making the case unappealable, but in which the jury has made an error due to a misinterpretation of facts in its deliberation at the end of the trial. When that happens, there is no appeal for the rest of our lives.

In addition to whatever sentence may be received, if a mistake like that is made, we bear the scars of that mistake for the rest of our lives.

Now, having commented briefly on the importance of our determination of facts, let me return to Captain Soule's testimony.

Now, I think it's fair to say that Captain Soule was one of the main witnesses for the prosecution. According to his testimony, he admits to being a central part of some sort of organized operation. Obviously, he acquired a large amount of money, most of it, as he said, from the pinball operations. The rest of it, as I recall his testimony, came from other chicanery connected with Mr. Gervais' "business activities" at the Fontainebleau.

Now, this is one of the most important witnesses of all for the government. This was the man who said, in effect, "I have been at the heart of the matter".

This was the man who said, in effect: "I have collected money and I have collected bribery and I have obtained information and sent it out in a sort of distant early warning system." This was the man who admitted to you that he was at the very center of some sort of bribery machinery.

Yet, when asked if he had ever had occasion to participate in any active bribery with me, his answer was no. When asked if I had ever asked him to do anything improper, this man -- one of the most important of the government witnesses -- said no.

When asked what kind of operation my office had, with regard to prosecution of pinball cases, his answer was an effective one. And it was, perhaps, the most telling part of his testimony when he admitted that to accomplish something, to actually accomplish something for anybody in the pinball business who was seeking to gain his services, he had to go over to the Police Vice Squad, to a contact which he had developed there. There was nothing in his testimony to indicate that he was able to accomplish anything in anyway through the operation of my office.

And I suggest to you that the reason for that answer will become apparent to you, if you recall the structure of my office, and the operation of it as described by former chief assistants and the former vice supervisors of my office. In my office, there was an effective system of control which is very important in this case -- because, in effect, the government is charging me with failing to enforce the law with regard to pinball machines.

But I had set up in my office machinery for supervising control over vice and gambling and -- as you could see when they took the witness stand -- the men who ran this machinery were competent men and not political hacks of any kind. You could hear from their testimony -- both supervisors and trial assistants -- that these were men who were never asked by me to ever do anything with regard to the pinball business. The vice supervisors, one after the other, testified that never did I asked them to do anything improper with regard to vice in anyway.

So, I just want to call your attention to the fact that at the very outset, the fact that I instituted such a structure in my office, that I set up such a vice supervisor operation, a vice-control department, is in itself evidence not that I was helping the pinball business in anyway, but that I actually was acting to discourage it and to enforce the law.

Now, there is another area of testimony to which I should call your attention, and I am still talking about the testimony of government witnesses. If you can go back to the testimony of the location owners, you will recall that one after the other, one after the other, told you that he would only pay off to somebody he knew. With rare exceptions, neighborhood bars, neighborhood restaurants, the poor man's clubs, paid off only to somebody they knew.

"Why wouldn't you pay off to a stranger?", they were asked again and again. And the answer came back, repeatedly, "because he might be a police officer and I might be arrested". And that, "I might have to go to court."

The thrust of their testimony -- and all of these location operators were government witnesses -- was that there was a very definite climate of law enforcement with regard to pinball payoffs; and they knew it. Even when they paid their friends off, they paid them surreptitiously. In some cases, they left the room, in other cases they waited until other customers, whom they did not know, had left.

But, they had to pay only friends and they had to pay surreptitiously because they knew that there was effective law enforcement with regard to pinball payoffs in New Orleans. This was not, as their testimony indicated, like the famous Cicero, Illinois. This was not one of these wide-open-towns -- not since I have been district attorney -- where you could flaunt the law and pay off a stranger and not worry about anything happening. The government witnesses, the location owners, themselves, made clear at the outset that there was in process in this city law enforcement with regard to pinball machines.

Now, I mentioned the testimony of one of the star witnesses of the prosecution, and his testimony to the effect that I had never asked him to do anything wrong. I reminded you of his testimony that to accomplish something he had to either leave the D. A. 's office or else do it before the office opened.

So, here we are with the location owners having testified, with the pinball operators having testified, with star witness Soule having testified -- and the government's case against me, instead of growing stronger, has begun to grow fainter and fainter and fainter.

So, then there came the tapes, the magic tapes as I have called them, because there are so many things you can do with them. And after the tapes, there came Gervais.

So, what we come down to in reviewing the government's case, really, are two threads, and threads which I think the evidence has revealed to be very slender threads: The government's secretly recorded tapes and the man named Gervais.

But before we come to that, there is one more point about the location owners worth making and that is to remind you that each one had immunity from the government, each one was perfectly free to tell you the truth. And I think it's safe to assume that they did.

These location owners testified that pinball payoffs had been going on in New Orleans from twenty to thirty years.

One man, John Bordes, testified that pinball payoffs had gone on without interruption since the 1940's.

Now, I am not going to bother to take up your time with my own travels and jobs, since the 1940's -- but that was a long time ago, and I have been doing many things since the 1940's. I have not been district attorney since the 1940's -- and yet one of the location owners testified that since the 1940's, there have been payoffs on pinball machines.

Now, I call this point to your attention simply to let you know that this is not a case in which there was a city here where there were no payoffs on pinball

machines and then suddenly Jim Garrison was elected district attorney, and immediately pinball machines begin paying off all over the city. This is not the case at all. Quite to the contrary, the location owners testified, one after the other, that the pinball payoffs have been going on for many, many years.

Now, that doesn't mean that I could ignore it and I will show you shortly that we did not ignore it. But, it does mean that we did not bring it into being, that this was the situation from time immemorial. I will show you that not only did I not ignore these payoffs to winning pinball players - I will show you that I actually did more than any other District Attorney in the city ever did to discourage the pinball operation in New Orleans.

And remember, the charge is, in effect, that I helped the pinball operation.

Let me stop a moment and remind you of the nature of the particular charge against me so that you can keep it in mind as we go along. This is very important because it relates to the burden of proof, which the government bears, as the Judge will charge you later.

The government must prove Jim Garrison guilty beyond a reasonable doubt. But, I come now to the point of "guilty of what?" What is the precise charge? And I want you to know what the precise charge is so that you will be all the more aware of the burden which the government has undertaken in attempting to make you believe that Jim Garrison is a crook.

The government's charge states, with regard to me, that it was part of the conspiracy that the defendant, Jim Garrison, district attorney of Orleans

Parish, Louisiana, would receive protection bribe money, contributed by the defendants, who would operate illegal gambling businesses to permit the pinball business to operate free from any substantial law enforcement interference.

And I emphasize, because it is a most important point with regard to this case, that the specific allegation is that I "permitted these businesses to operate free of any substantial law enforcement interference." I suggest to you that the evidence is eloquently clear to the contrary.

As you know by now, I do not have to prove that I am innocent. The government has to prove that I am guilty. That, too, like having a jury, is part of our system. But, nevertheless, in spite of the fact that I don't have to prove I am innocent, I think the fact remains that the weight of the evidence clearly has shown that I did not permit these businesses to operate "free of any substantial law enforcement."

In fact, the evidence has demonstrated that I took actions very much to the contrary -- I took stronger actions than had ever been taken before.

The testimony of all of these government witnesses -- the pinball location owners -- was to the effect that none of them ever had succeeded in fixing a case in the D. A. 's office. If they ever had succeeded, please believe me, you would know about it, because this is a very competent government prosecution, to say the least. And it hardly would have glossed over such a fact if it had

been possible to prove it. These location owners had received immunity and if they ever once had succeeded in bribing my office, paying my office off, fixing a case, you would know all about, and you can bet your life on that.

And such testimony did not end with the location owners. It was the same with the pinball machine owners and operators. Now these owners and the operators really comprised, as a group, the major witnesses for the government. Some had pleaded guilty and had their sentences postponed, and others had been severed as defendants. Yet, for the most part, I suggest, they nevertheless felt they had to tell you the truth and, consequently, even though they testified as government witnesses they did not go so far as to lie in behalf of the government.

With regard to the pinball machine owners, one after the other, except for the two or three with whom I had had only brief encounters, testified under oath that they not only had never bribed me, but most of them had never even met me.

Yet, under the charge in this case, these men are supposed to be my fellow conspirators. These men are supposed to have been in the business of participating with me in this great conspiracy, a conspiracy apparently great enough to concern the United States government, and yet most of them never saw me before nor had had anything to do with me in any way nor ever bribed me in any fashion.

Now, in his opening argument, Mr. Gisleson -- of the government -- made the point, as I recall it, that such apparent absence of a relationship actually is "indicative of a conspiracy" -- where "these men" do not know "this man", where they have not seen him, and they have no connection with him of any kind, that, supposedly, shows the very conspiracy.

I suggest to you that there is at least one other alternative explanation of a circumstance where the pinball owners do not happen to know nor to even have encountered the district attorney -- and that other possible explanation happens to be that they simply had no reason to know him because he was never part of any conspiracy with them.

In any case, their failure to know me hardly adds up to proof of a conspiracy. Certainly conspiracy does not exist in the open, but the fact that evidence indicates that a group of men do not know the district attorney hardly becomes sinister simply because conspiracies usually occur in the dark and are clandestine. If anything, the government's curious contention here really amounts to an argument in my behalf. It amounts to an argument that most of these men just plain didn't know me and just plain didn't have any relationship with me -- which hardly adds anything to the government's claim that I was part of a conspiracy.

Now that we have disposed of these government witnesses -- the pinball machine owners and the location owners and Captain Soule -- we come to the

magic tapes and to the man named Gervais. You heard the prosecution play its tapes for you, and I am sure by now you have become aware that the very volume of tapes had the defect of making it clear that the one man who was really hustling all the time to put things together, the entrepreneur, the man who was attempting to locate everybody, to get everybody tied in, to get this man to go see this person, and that person to go see some other person, the man who not only put everything together, but somewhere along the way, had corrupted Captain Soule, and somewhere along the way, as Soule testified, had corrupted Sergeant Frey, the man who was the prime mover in the whole "conspiracy" operation -- was the government's own star witness, Pershing Gervais.

As a matter of fact, I think you have a right to ask yourselves -- since he was so successful in putting together all of the people and the structure which the government claims is a conspiracy -- you have a right to ask yourselves whether this so-called conspiracy would have existed were it not for the activities of the government's own star witness.

Let's say, for the sake of argument, that Pershing Gervais had not come to New Orleans to live, but at an early age had gone to work for General Motors of Canada, and after twenty-five years or so, had worked himself up to the position of division field manager, which is the customary route in reaching a division field manager's position. It usually takes longer than the

two weeks course which Gervais took. Let's assume that Pershing Gervais had done all this, and remained in Canada, and was working there, now.

To dream the impossible dream, for a moment, we have to ask the question, whether there then would have been any kind of conspiracy at all in New Orleans. This is the man who testified with pride of the money he made and the people he fooled and even of the ways in which he fooled the government. This is the man who was described by other witnesses with sufficient characterization so that you could see for yourself, I am sure, that he could manipulate anybody -- a man with something very close to genius for manipulation.

Now, if he had never lived in New Orleans, I ask you, what would have happened -- would there have been any structure at all without all his calls, without his manipulation? His calls to this man to meet this man, for this man to meet this man. . . . Without him there to keep putting everyone together, in an industry which was dying because of previous legislation by Congress, and well on the way out -- would there have been any pinball conspiracy? Would there have been any payoffs at the Fontainebleau for card games and pinballs, for massage parlors and handbooks -- all accomplished unknowingly in my name -- if this man had been spending the years working his way up to a division field manager in Canada instead of taking the quick short-cut to wealth by becoming a "short-stop", a reknowned "fixer" in New Orleans?

I suggest that the answer is that there probably would not have been, because he was, in the phrase sometimes used by lawyers, the sine qua non.

He was the essential factor, he was the major force, the prime mover, the person without whom nothing would have happened. So, that forces us to ask ourselves whether or not -- if a conspiracy did exist, one in which he played the dominant part, in which he took the most active role -- then was it not a conspiracy actually initiated, not by the other defendants, but by the very government, itself? For throughout this entire case Pershing Gervais was nothing, if not the government's man.

But, remember the brilliance of this man, Gervais -- and I am not talking about his integrity and I am not talking about his character, but I am talking about his obvious brilliance.

I suggest to you that Pershing Gervais has demonstrated to you that he is a man brilliant enough to put together a conspiracy where none existed -- so that if there was one, unavoidably, it was a conspiracy put into operation by a man who was nothing less than the government's own agent.

So, if we look at this whole "conspiracy" with clear eyes, it becomes apparent that it really was very much the creation and property of the government just as Pershing Gervais was its own creation and property as its undercover agent.

There is another thing I want to remind you about with regard to the government's secret tape recordings and Gervais' conversations with the various pinball operators. It is always Gervais who is bringing my name up.

Not the pinball operators, certainly not me, but the government's own agent. It's always Gervais.

One pinball operator asks him a question, "what does Jim have to say about this?" "Well, I haven't had a chance to see him yet," is a typical Gervais reply, "I don't have enough information to go to him yet."

Another asks a question, "what does the 'Big Man' have to say about this?" Obviously, they and Gervais have had conversations before, and so we have another reply: "Well, I can't go to him with this small amount of money. Garrison is such a hog, you know." And, always it is Gervais -- on the secretly recorded tapes with them -- bringing up the subject of money for me.

Now, during these conversations, in which Gervais speaks again and again of me, dragging me in, hauling me in, and hustling them more and more and putting them together and calling and tracking them down and constantly pushing and pushing them for more and more money, the pinball machine owners -- although unaware that they are being secretly recorded by the government -- never have occasion to speak of any bribery relationship, of any relationship with me since 1962, when I came into office. It is always inference by Gervais. It is always inference by the government's own agent. That is the origin of it all.

Above all, I think you should consider as important the fact that all of these operators spoke to him so many times, and were recorded so many times,

and yet none of them knew what my opinion was concerning, say, the anti-pinball legislation which they were so concerned about. They certainly would know that if we had had a long relationship, or a relationship of any kind. They would have known a year before. They would know where I stood on almost anything. But, they didn't know at all.

The point I am trying to get across is that so much of the whole structure -- alleged by the government to exist -- grows out of the mouth of Gervais that you may want to give sound thought as to whether or not the entire conspiracy charge, in this case, did not grow out of the mouth of the government's chief witness, Pershing Gervais.

Now, there really -- and I cannot emphasize this too strongly -- there really was no reason for the pinball operators and owners to have to pay off any District Attorney in Louisiana, certainly prior to 1972 -- and that was shown to you by defense witnesses. The witnesses to this testified clearly. Not only Professor Leon Hubert, the former District Attorney, but other District Attorneys: Edwin Ware, the District Attorney of Alexandria, and head of the District Attorneys Association in Louisiana, my former top executives, my former vice supervisors -- all, one after the other, testified that prior to 1972, as a practical matter, District Attorneys in Louisiana lacked the machinery to be able to get at the pinball owners and the operators of the pinball machines. They simply lacked the machinery.

Now, most of the government witnesses and other defendants were in the pinball business -- and again, I remind you that under the law of Louisiana, pinball machines were not made illegal until 1972, illegal as such. They were practical businessmen. I think it's safe to assume that they had lawyers, that they had to know better than anybody that pinball machines have been in operation in New Orleans, in Louisiana, for thirty years or more. They had to know that there was no general immunity statute in Louisiana by which the District Attorneys could have given location owners immunity, unlike the federal government, which had such a statute. They had to know that the Fifth Amendment could always be effective as a bar to any State prosecution and they had to know, above all, that until 1972, under Louisiana law, pinball machines were legal.

The evidence in this trial, nevertheless, has shown that the hardest effort to get at the pinball operators was made by my office -- not by any other office -- but by my office, in 1969. The United States has not presented any cases to you, for example, in which the District Attorney of such and such a place did this in 1948 or '47, and over there they did this in 1963, and so forth and so on. The record shows that the first and only attempt ever made to get at the pinball owners was initiated by Jim Alcock -- who at the time was my chief assistant.

My former chief assistant District Attorney, Jim Alcock, as he testified made the one concerted effort ever made in Louisiana -- an effort obviously

made with my approval -- to use the Grand Jury to get at the pinball owners. And he found himself blocked because he simply didn't have the machinery.

One owner brought his accounting books to the Grand Jury, and Jim Alcock happens to be an accountant, but Alcock wasn't able to do anything with the books because they led nowhere, and he could read books in an hour better than most of us can in a week.

The point is that, before 1972, the legal machinery for getting at the pinball owners just did not exist in the State of Louisiana. So, I suggest to you that it's a little bit too much to expect a man who does not have the machinery to do a particular job in the absence of the required machinery.

For example, physically we might have gone out and attacked the pinball machines with axes, but it would have been a matter of hours before we were enjoined by Civil Court because until 1972, the machines were legal and were not contraband.

And remember, when I was arrested in June, 1971, they were still legal. They were not contraband until the passage of a new State law in 1972. However, that didn't prevent the federal government from arresting me in 1971.

Nevertheless, in spite of the fact those machines were not contraband at the time, the testimony in this case shows that I already had initiated a major change with regard to aggressive prosecution of pinball operators -- a historic change. When I found out, after coming into office, that the custom had been to give the pinball machines back to the pinball operators even prior to trial, I brought an end to that generous custom.

The testimony shows that I felt that it was ridiculous that the Judges only were fining the defendants after we convicted them. It shows that I concluded that there should be more inconvenience for the pinball business because of the trouble the Vice Squad had to go to make the cases, so I issued the first order that ever stopped the property clerk's office from automatically giving these machines back to location owners as previously had been the case since the Criminal District Court was built.

Is that helping the pinball business? Did I really help that business in any way during my years as District Attorney? Was it really worth while paying money to Jim Garrison when he held onto the pinball machines, prior to the previous custom, when in '69, he sought to get at the pinball owners by means of the Grand Jury?

I would have to have been a mighty poor man to do business with. Certainly a very inept conspirator because -- after treating my "co-conspirators in such fashion -- if we had been conspiring, I would have found it very difficult in the future to find new industries or businesses that would want to participate with me in a conspiracy. They would have known quickly enough that as a "co-conspirator" I would hurt them far more than I ever would help them -- and that's a pretty fair description of my actual relationship with the pinball industry, as a whole. I hurt it a lot more than I helped it.

The evidence has shown that the machine owners simply could not obtain access to me as District Attorney. I did not have to prove that, because as I

told you, the government has to prove that I am guilty. I don't have to prove that I am innocent. Nevertheless, I proved -- with a series of honest, responsible and highly respected witnesses for the defense -- that the machine owners simply could not get any help from me at all.

Now, that's very important to keep in mind. If they didn't have to pay me, then why would they pay me -- except for the constant intercession of a man named Gervais, the government's man, collecting money in my name from every direction?

Everything that Gervais touched resulted in him getting some money. Anyone who had anything to do with him, lost something. I don't remember the number of that hotel room he operated from at the Fontainebleau, but I guarantee you that the Gideon Bible from that room has been gone a long time --

THE COURT:

Wait, I am sorry to interrupt.

Marshal, who was that?

If I can ascertain who it is, I will eject the individual.

The Marshal will try to keep an eye on the situation.

I am sorry to interrupt you, proceed.

MR. GARRISON:

Yes, sir.

Anything this man, Gervais, did, resulted in his ending up with money. At the same time, as the evidence indicates, every time he did something he

mentioned my name in such a way as to indicate, in some fashion, that he was going to carry this money to me or to a Judge or to some other law enforcement official.

Now, remember this factor, too, because it also relates to your getting a clear picture of the whole structure. Here is a man who did not dare to deny on the witness stand what was too well known. Not for a moment do I present this government witness as an example of truth and veracity, not in any way, but it simply was too well known (and he was sufficiently proud enough of it) so that he freely admitted having received money from gambling, money from bookies, card games -- "playing results", as he called it. In his game of "playing results", for example, if you had a son charged, and Gervais found out it was a weak case, he would call you and say he could get your son off for \$5,000.00.

So, here is a man who is "playing results" and collecting money for protection which he really couldn't provide (because, as he complained, as you heard from witnesses again and again, he could never get me to do anything for him). Here is a man collecting all this money for all these different things, and yet -- even though he boasted about it, and even though he testified as a witness for the government -- he could not look you in the eye and testify that one dollar, that a single dollar from all these other various enterprises ever came to me. Obviously, he kept it all.

With regard to the massage parlor about which I questioned him, he described himself as a "consultant" to the massage parlor, which so far as the evidence indicates, seems to be the nearest thing to a job he ever held after the day he left the district attorney's office. As a "consultant" to the massage parlor, he also got money in my name - and kept it.

But there was no evidence nor testimony of any kind that such money came to me. Yet, his testimony was, when he collected money in a pinball case -- since that is what the government's case is based upon and since he has been granted immunity by the government (as well as freedom from State prosecution) -- well, then, he just had to get to Jim Garrison, to give Jim Garrison the ninety percent due him.

Now, first of all, you sat here and saw that man testify, and you heard some of the things he said, and you must have a pretty fair idea of what his philosophy of life is. Can you imagine that man Gervais giving any human being ninety percent of anything? How would you like to have to hold your breath while you waited for him to give you ninety percent of something?

And secondly, I suggest to you that if, by some curious twist of the mind, he did decide that he would give me ninety percent of his pinball collections, well, then, why wouldn't he be giving me eighty or seventy or maybe fifty or forty percent or maybe just ten percent of his other businesses?

What was it about the pinball business for the government's star witness that made it so different from all the other businesses? What was it about

that particular business that caused him to feel: "I've got to go find "Big Jim" because I want to give him his ninety percent." I'll tell you what it was about the pinball business. It's because that's the one operation to which the government has worked so hard to connect me. That was the one operation, over which my office had some jurisdiction, however limited, which the government could describe as interstate in character -- thereby giving the government its claim for jurisdiction to prosecute me.

As a matter of fact, this man collected money for himself from so many directions, in so many ways, so fast, that even before he left town, after coming to my house on the night of June 29th (which was the night before I was arrested) he made one more collection -- even while ostensibly working for the government as an undercover agent -- from one of the massage parlors which he had paying him off.

So, I think it's safe to say that this man who speaks of being "reborn" had not quite yet been reborn. If he was enroute to being reborn, he was at most somewhere in the process of gestation, but he had not yet been reborn, because he had to stop and make one, final quick collection from one of his many illegal "short stop" operations.

This was the man who would have you believe that he would give me ninety percent of something that he collected. But this was a man to whom money stuck like glue. You have heard him testify in response to cross-examination. You have heard other agents describe his proclivities regarding

money. Ask yourselves if this is a man who would turn over ninety percent of what he collected to anyone.

Now, to go on to another matter, let me touch on some of the inferences made by Mr. Ellis, one of the government's attorneys in this case. Mr. Ellis kept repeating to you that Captain Soule was "in Garrison's office," much as if I had him put there. But, I call to your attention to the fact that the evidence clearly showed at that time that I had made the inquiry: "why was Soule, a Captain who used to be head of the Police Vice Squad, in the D. A. 's office? How were we able to get a Captain?" And you heard the answer that indicated that he had been transferred to my office from the police force because he had heart trouble, or something of the sort, and needed a desk job. However, the point is, I didn't bring him in there. He wasn't my creation and, as his own testimony made clear, he never really became a part of my office operation. By the time Soule arrived in my office he apparently had become part of a quite different kind of operation -- one which the government, using guilt-by-association, has tried to connect with me.

Now, another thing that Mr. Ellis mentioned was that the local federal agents in this case had impeccable reputations. He said these are not the type of men to frame anyone. He said, "I dare Mr. Garrison to look Dave Moore in the eye." Well, now I am looking Dave Moore dead in the eye, and I say, "Mr. Moore, I think that you are, indeed, an honest man and I respect you." The

point is that I don't feel that these particular gentlemen, sitting here before you, would frame anybody. That is not, however, the problem. The problem, I suggest, is with regard to the endless number of unseen federal agents who for three years constructed the false charges against me -- and this small army of federal secret police is not sitting here before you. They couldn't be. They wouldn't fit inside of the court room.

With regard to the role of federal agents behind the scenes, I remind you that we are dealing essentially with this unusual man named Gervais, a man who is capable of manipulating everybody from an experienced federal agent to a district attorney who might be naive in some areas to the very federal government, itself, in Washington.

Who do you suppose got Gervais the job with General Motors of Canada -- a job for which he had to work several times a week for five to twenty minutes, and for which he got \$22,000.00 a year? Do you think Federal Agents Puckett or Lanoux or Dave Moore -- sitting over there -- got that job for him? It's no reflection on them to say that they can't get someone a job in Canada, for \$22,000.00 a year for working a few minutes a week. As a practical matter, if they could, they probably would take the job, themselves, and that's no reflection on them.

Now, the point I am making here is that obviously there had to be someone in this case at a higher level. So, my reply to the United States Attorney is that in no way do I insinuate that there was any sort of attempt to frame me or

to get me on the part of the federal agents seated here in this court room. Your common sense should tell you that the federal agents who handle the dirty work behind the scenes are not the ones they later send into the court room for you to see.

Another thing which revealed the special interest in my case in Washington, was the admission by Gervais, on cross-examination, that former Attorney General John Mitchell had sent him a message of thanks for a job well done.

And so the appreciation of his government went to this most unusual man, Pershing Gervais, a man whose only god is money, a man without a god, but not a man without a country, for his country has done well by him and knows his worth.

But just how did he come to be working with the government? Do you recall my questioning him about the inquiries made in '68 and '69 by the Internal Revenue Service, and his answers to those questions?

You will recall in the cross-examination that Mr. Gervais did admit that he had been questioned by Internal Revenue Service agents, that he did not allow them to examine his safety deposit box, that he did not allow them to examine his records, that he would not sign any waivers of any kind. I asked him if he had ever had subsequently, and he said no. But, obviously, some form of inquiry had begun, as the evidence indicated, into his income tax situation.

Now, I've told you before of the Gervais operation -- which ranged from collecting money in the name of protection, to collecting money when betting

results paid off -- and I suggest to you it's not too hard to conceive such a man would short-stop money whenever he had the opportunity. And in the course of the passage of years of short-stopping money collected in the name of someone else, it's unavoidable that such a man would acquire a great deal of money.

So, he was questioned by the I. R. S. , and he failed -- initially, at least -- to cooperate with regard to questions about his I. R. S. exposure. But remember, I am talking now about the summer of '69. However, in late '69 or early '70 we suddenly began to see, in the evidence, the first signs of cooperation by Gervais with the government.

Somewhere between the summer of 1969 and his arrival in Canada in 1971 to take over the field management for a division of General Motors, a marriage of some sort obviously was consummated between Mr. Gervais and the federal government. This was what used to be known in Europe as a marriage of convenience. You can see, from the charge against me, how convenient it was for the government. And obviously it was convenient for Mr. Gervais because, as he testified the other day, after revision of his tax two years ago, he still owed \$8,000 to the federal government -- a small enough sum considering the extent and variety of his activities. When I asked him when the last demand was made upon him by the government, he replied that there hadn't been any demand.

I am not telling you that the next time you send in a tax return, that you should refuse to send along the money, but I just want to ask you one question.

If you sent in a tax return next year and you failed to include your payment with the tax return, just how many days do you think it would be before you heard from Austin, Texas. What would you guess: fourteen days, seventeen days? Do you think you would be lucky enough to get two years of silence from the I. R. S. ?

Yet Gervais never has been asked to pay the \$8,000. Obviously, at some point before he became its witness that marriage was consummated between Mr. Gervais and the government.

Now, even after that marriage, this man continued to play the field. Even after he began working for the government, he still sought money from different directions. Even after his return from Canada, he met with the lawyers for some of the former defendants in this case. You heard the testimony of Mr. Johnson, a highly reputable attorney. Gervais wanted a \$2,000.00 cover charge merely to talk to the lawyers - and that was for openers. Of course, he didn't get it, but he asked for it.

Mr. Johnson also testified that Gervais asked for \$100,000.00 in exchange for which he would provide testimony and tapes which, he indicated, would free all of the defendants in this case. Of course, this offer was not accepted. His own attorney, Russell Schonekas, according to the testimony of attorney Guy Johnson, was shocked and said: "My God, Pershing, are you saying you would commit perjury?" And I think you remember the answer well enough so that I

won't even have to repeat it. The answer was in the affirmative, to say the least.

I suggest that it will be many years before you see a greater example than Pershing Gervais of the fact that you cannot serve both God and Mammon.

I ask you: can you trust the word of such a man whose only God, by his own word, is money? Can you trust such a man to be one of the crucial factors in deciding whether or not to send other men to the penitentiary?

Incidentally, in that regard, when I asked him if he expected to be prosecuted, he replied no. And this is a man who, for two years, has owed \$8,000.00 to the Internal Revenue Service and never been bothered once. Can you really allow yourselves to vote for a conviction when any part of your decision is based on the testimony of a witness like this?

On the other hand, this is not a man to be underestimated. The testimony in this case shows that from his headquarters at the Fontainebleau, at least until he got into his dilemma with the Internal Revenue Service, he was involved with so many enterprises that I won't even begin to name them.

However, I wanted to call to your attention something that seems to have been overlooked in the initial opening arguments of the government. There had been initiated, however low the key, an inquiry by my office into Mr. Gervais' activities, as testified from the witness stand by both my Chief Investigator Louis Ivon and Investigator Lynn Loisel. As a matter of fact, Mr. Loisel was able to identify specific locations of the Gervais shake-down operation which

he had found. And Mr. Ivon was able to tell you that I also had asked him to look into the activities of former Captain Soule and Sergeant Frey -- who were associated with the activities of Gervais -- and see what he could find out about them.

Now, I will tell you why this is important. I asked Gervais, on cross-examination, if he remembered a conversation with Alexander Brodtman, an Internal Revenue Service agent, and James McCormick, a special agent with Internal Revenue Service in May of 1968, and he said he remembered it at the Fontainebleau; I then asked him: "Do you recall indicating to them that Mr. Garrison was an individual who did not care too much about becoming wealthy", and "if the government investigation showed that he owed taxes, it would be because of Mr. Garrison's carelessness"? The reply of Gervais was that he recalled the general conversation and his answer to my questions was "yes".

So, we know that as of the spring of 1968, this man had not yet consummated his marriage with the federal government, and had nothing to say with regard to me, that touched on pinballs or anything else, and yet, at this time, he was now in his third year since he had left my office. It was sometime the following year, as I think the testimony indicated, that the Internal Revenue Service inquiry of Gervais began and while he still would not reveal any information about himself to the federal government, otherwise his relationship to the government grew very warm -- and the romance began.

Now, consider the essential logic, if you will, of the position of the government in this case. It chooses the unbelievable testimony of a man who admitted what you might call "hustling" at the Fontainebleau, making his money the easy way, a man who another witness actually saw with a box of diamonds, a man whose occupation, if he ever had any during the years he left my office, is still a mystery, an admitted shakedown artist who would not let the Internal Revenue Service even see his safety deposit box, a man who, by his own admission, cannot be believed under oath -- and then consider that the government has sought to make you think, by repeating and repeating his testimony, that a district attorney, whose honesty has never publicly been questioned before, is a crook.

It seems to me that there is something in that set of circumstances that is reminiscent of using the wolf to catch the sheep.

I suggest to you that there is almost no serious action which you would want to take on the word of a Gervais after you heard him testify. I suggest that when you reflect on his own testimony, and on the testimony about him, you will have to conclude that he is like the man whose word was so unbelievable that, when he wanted to call his dog, he would have to go to his neighbor and have the neighbor call his dog for him.

I suggest to you that you will want to put very little stock in this most important of all government witnesses.

Why is it that my conviction in this case and the conviction of the other defendants appears to be so desirable to the federal government in contrast to the obvious misdeeds of Mr. Gervais, who doesn't fear prosecution? His misdeeds are recited and boasted of openly. Some of them are virtually legends and yet he is the star witness for the government and we are the defendants.

I think it's an insult to your intelligence to present Mr. Gervais as a major witness in a case which may involve the freedom of anyone.

Now, the government's evidence; if we may call it that, also has another curious aspect. It presents us in effect with a number of conspiracies, which I won't bother to itemize or go into, but one of the problems is simply this: the more you consider the government's evidence the more you see of one apparent conspiracy over here and another one over there and another constellation over here, and another constellation over there. I suggest you will find yourself saying that the only thing the evidence clearly shows is that there was a major shakedown operation going on at the Fontainebleau Motel, and that the central character in the shakedown operation was Gervais -- the government's star witness. And with regard to this shakedown operation I think it's certainly fair to view the other two defendants, these two men here, as victims. Who are the victims in this case, after all? Who are the sheep and who is the wolf?

I ask you to reflect on the role of Mr. Gervais in this case, and I ask you to question yourselves when you deliberate and ask if it isn't a fact that,

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whether inadvertently or not, the government has ended up proving more substantially that a great shakedown operation existed than it has that I participated in any sort of conspiracy with these other two defendants here.

Another thing for you to remember in this case is that the government's conduct has been particularly curious.

Let me remind you of some of the evidence in that connection. You will recall that -- without getting into the rather complex question of who made the decision and who first wanted to go to Canada -- under cross-examination, Mr. Gervais admitted that he changed his last name to Mason in connection with his going to Canada.

He admitted that he had a son named Darryl Lee and that Darryl Lee was born in New Orleans, in April of 1966. Mr. Gervais admitted as well, that his son's name initially in New Orleans, when he was born, was Darryl Lee Gervais. Mr. Gervais admitted that he also had a daughter Jeannine Marie Gervais, who was born in New Orleans.

But in moving to Canada Mr. Gervais had changed his name to Mason, and therefore he encountered a problem when it came to sending his children to the schools in Canada because they required birth certificates. The required birth certificates had to come from here where they were born, but to get them from here would have indicated that his children were not named Mason at all but that their name was Gervais.

So, what he needed was some birth certificates which indicated that their name was Mason. And these -- according to testimony of the star witness of the government, Pershing Gervais -- were provided by the Justice Department.

First of all, it provided him with a Certificate of birth indicating that Jeannine Mason, was born in Phoenix, Arizona in November, '56.

And remember, Mr. Gervais admitted Jeannine was born here. Now, at the bottom of that, we see a signature of a man who purports to be the State Registrar, another signature of a person who purports to be the Director of Records, and another signature of the Clerk. So, we have to ask ourselves, is this four forgeries or just three -- how many is it? There are three signatures on it which cannot be real, the document is a forgery, and it was provided to Gervais by the Justice Department to help him leave the country. And I want to give it to you, if I may, so you can look at it. (Counsel hands the document to the Jury.) This is for Jeannine, the little girl.

THE COURT:

Now, wait just a minute, now. You are going to have to stop while they are looking at the document. You are going to give them both of them?

MR. GARRISON:

I am going to make one line and hand this one to the other row, sir.

THE COURT:

Oh, all right, go ahead.

MR. GARRISON:

I am going to give the second row the birth certificate which indicates that Darryl Gervais, now his name changed to Darryl Mason, was born in the State of Delaware, which also is a forged birth certificate. The back seat -- may want to pass on to the front and vice versa, when you finish. (Whereupon, counsel hands the document to the jury.)

According to the testimony of the star witness of the government, Mr. Gervais, these forged birth certificates were provided for him by the Justice Department. If the Justice Department will forge the birth certificates of two infants, if the Justice Department will commit certain crimes, what is there that it will not do if it desires strongly enough, and the objective is interesting enough? What is there that it will not do?

Now let's go to the letter written by John Wall, the attorney in charge of the organized crime and racketeering field office of the Department of Justice which was written on September 28, 1971. It was written to Mr. Gervais, who at the time was in Canada.

In this letter to Mr. Gervais, signed by John Wall, it says: "you agreed that during the period September 1, 1971 to August 30, '72, you would accept employment commensurate with your ability -- commensurate with your ability at the salary offered and that the Department of Justice agreed to supplement such income up to \$22,000.00 a year."

Now, at that point, let me remind you that during the cross-examination of Mr. Gervais, when I asked him what qualifications he had to be the field manager of General Motors of Canada up in that area, he said he had none, initially, but he took a course when he arrived. And I when asked him how long the course took, he said two weeks. So, after two weeks, he was qualified for the total of \$22,000.00 a year.

Now, the next to last paragraph, which is also relevant to this case, states: "It was further determined on September 8, 1971, the subsistence is paid on condition that you not re-enter the United States without the prior approval of the Criminal Division -- that you not re-enter the United States without the prior approval of the Criminal Division and that all future payments will be cancelled and the Department of Justice will be relieved of any responsibilities if this condition regarding re-entry is breached."

I just want you to visualize yourself as the defense in a case like this, where a man has changed his name and moved to another country and has now been sent a letter with that exile provision in the next to last paragraph. And imagine, if you will, as a defense attorney, trying to locate that man with regard to preparing for trial.

Now, you remember that I questioned Mr. Gervais about an interview which he had with Rosemary James. I asked him, first of all, if he remembered the interview -- which occurred in Canada, in May of 1972 -- and he said he did.

And then, I asked him if he thought he could remember whether or not he had made certain answers if they were read to him, and he said that he didn't know -- that he would have to find out when they were read. So, I asked him these questions, in effect, by reading the dialogue:

"Rosemary James: You were forced to work for the government?"

Gervais: But more than that, I was forced to lie for them, that's a better description.

Rosemary James: What were you forced to do?

Gervais: Well, it became clear in the beginning, it was obscure, it was always hence, you know, what we want, you know what we are doing, see."

Midway through the thing, they identified Rosemary James.

"Gervais: Through the beginning of harassment until that time where I, for the want of a better description, was seduced by the Justice Department, you know, if I could be seduced, as if there was some question somewhere in there, it became clear that they were really interested in but one man, Jim Garrison, and in their minds, they knew that I was the guy who could get him.

Are you saying you got him?

Oh yeah, no question about that."

In response to that one, he said that he didn't remember it directly, as I recall, although it was familiar enough that it could have taken place.

I asked him if he recalled this part of the dialogue:

"Rosemary James: You are giving me a lot of double-talk here as far as most people are concerned, did they want to investigate people in the pinball, did they want you to investigate people in the pinball industry and Jim Garrison?"

Gervais: They wanted Jim Garrison.

Rosemary James: What do you mean when you say they wanted Jim Garrison?

Gervais: They wanted to silence Jim Garrison. That was their primary objective, because if that were not true, I would still be in New Orleans. If that were not true, I would still be in New Orleans.

Well, who decided to go to Canada?

Rosemary James: Well, now, are you saying that you participated in a deliberate frameup?

Gervais: A total, complete political frameup, absolutely."

Now, I asked him on the stand if that were true, and he answered, in effect, that he would prefer to say whether or not he felt the statement was responsible or, irresponsible at the time. I don't think there is any dispute about that.

And in this case, his testimony was that now he felt, looking back, it was an irresponsible statement. Again, I let you be the judges of that, because you

are the judges of the fact.

But, you might want to decide whether or not the statement, in fact, was true. If it was true then is he saying, now, before you, under oath, that it's not true? Or, if it were not true, then, is he saying now, that it is?

But, it's just irresponsible, he says now. You have heard the concepts and their interpretation as to what Gervais meant, here before you, and what he meant in the interview. I leave up to you.

But, there seems to be a slight variation, and I suggest that you might want to take that variation into account in evaluating his veracity or the likelihood that he is telling the truth. Here is some more.

"Rosemary James: What you are saying explicitly is that the government's total case against Jim Garrison is a fraud?

Gervais: No question about it. Anything founded and based purely on politics can't be anything but fraud.

Rosemary James: It's a whole lie?

Gervais: The entire thing."

Now, again, in fairness to the other side in this case, I want to emphasize that his evaluation of that last point was that, in retrospect, he regarded that as essentially an irresponsible statement. But, having done that, I want to remind you of the testimony of the attorney, Guy Johnson, on the last day in this court, concerning the seriousness with which Pershing Gervais regarded the taking of

an oath. You may want to measure that by the measuring stick giving to you by attorney Guy Johnson in his testimony on the last day of the trial.

I come now to a new area, the subject of the government's secretly recorded tapes. The magic tapes.

As you will recall, Mr. Ellis -- one of the government's attorneys -- relied heavily upon Officer Nash's conclusion that the Government tapes were not doctored.

I ask you to remember that when Officer Nash -- the government's expert -- testified, he let you know that he was the man who never made a mistake. In effect, he indicated that he had handled 3,000 decisions in this particular area without making a mistake. I'll let you draw your own conclusion on that, because I really think a comment is unnecessary.

In contrast, I want to call your attention to the testimony of Dr. Gerstman, the expert witness produced by the defense.

He testified, with regard to the government tape which he studied -- which is the now famous S. R. 7 tape -- that he found indications that this tape had been fraudulently fabricated.

In his cross-examination the United States Attorney asked him, "Why did you stop after you found three instances of fraudulent fabrications in the tape?" and Dr. Gerstman replied, "Because it wasn't necessary to go any further."

Now, that might be confusing to you in a sense, but let me see if I can give you a perspective which will help you understand the point which I feel he was making.

If you were about to take an airplane trip with your family on a four-engine jet, and you happened to look at the first engine and noticed it was about to fall off, I don't think you would say to your family, "Well, the other three engines are probably okay; let's all climb aboard."

The point is, you wouldn't have to look any further.

If you were to find a man laying on the ground, not breathing, and you found three bullets in his head, there would really be no great point in examining his ankle and his shinbone to see how many others there were, because when he's dead, he's dead.

When there's a bad engine, there's a bad engine.

And when there's evidence of this fraudulent fabrication, then there's fraudulent fabrication -- and I suggest to you that that affects necessarily, as a matter of logic, the other tapes too, although I remind you, of course, that Dr. Gerstman is a professor in psychology and speech and hearing sciences at the City University of New York, and I suggest to you that it is not without significance that after having been presented this expert -- who in effect discredited the tape -- that the Government did not reply with an expert to say, "I am a tape expert."

I suggest to you that the testimony of the last tape expert you heard in this case is clearly unrebutted by any other tape expert of any kind, and I ask you to take this into account in your deliberations.

The price we pay for progress is a high one, and as each of us has probably learned more in the past decade than people learned in the preceding 10 or 20 years, the price is a high one. If you live in cities, you have smog. Our cities are becoming parking lots, one thing after another, and I suggest to you that one of the prices that we pay for progress, in our day and time, is the secret, electronic tape recorder in the hands of the Government.

Now, let me ask a question, and I want you to ponder it if you will.

In the last year or six months has any conversation of yours been secretly tape recorded by the Government, federal or state?

Ask yourselves: Have any telephone conversations made by you been secretly recorded by electronic eavesdropping equipment? Ask yourselves that, if you will.

All of us occasionally say things which, in retrospect, we wish we might not have said. Sometimes we even say them about friends, in a moment of irritation perhaps, perhaps foolishness.

But the point is that we all have one thing in common. Every one of you sitting there, every person in this courtroom, and me, certainly, has one thing in common, and that is, being human, we are imperfect. And one of the results of such imperfection is that we occasionally might say things in private conversation that we wouldn't say publicly. We do things like this because we fall so far short of being perfect. There is no perfect person in this courtroom, in this city, in this country. It has been nearly 2,000 years since the last perfect

man was on this earth.

Now, ordinarily, your imperfection and mine are not of that much concern to us. But they can become of great concern to us if our imperfections -- such as what we think are casual, private conversations -- start to become secretly taped, and recorded for posterity, by the federal government.

The great danger of our being secretly recorded by any government -- whether the State government or the Federal government or any government -- is not merely in the information sought by government, as it would contend, but in the other matters which may come out during the indiscretion of our conversations -- whether those indiscretions are the government's business or not. The real danger is not so much in the substance of what the government might discover as in the loss of your privacy. Yet our privacy is supposed to be guaranteed by our government -- not invaded by it. You will recall that, at the outset, I reminded you of the Bill of Rights in our Constitution, which is our only protection against the government. One of the rights supposed to be secured by the Bill of Rights is our right to privacy. You may want to keep this in mind during your deliberation, because the right to be free from intrusion by the government is involved in this case.

The case for the defense can be summed up very briefly.

I have finished my analyses of the government's case. It would be enough now merely to point out to you that I don't have to prove myself innocent, and

the Judge will charge you to that effect. Nevertheless, the defense did present evidence which I will very briefly describe to you.

But I want to sum up my review of the government's case with a sentence. I do not believe the government established, nor even came near to establishing, that a conspiracy of any kind existed, which involved me or, for that matter, any of the defendants in this case.

On the other hand, with the evidence presented by the defense, I showed you that my office did everything possible, and went farther than anyone had ever gone before, with regard to the pinball operators.

Former District Attorney Leon Hubert pointed out that there were no real mechanics, and he's a professor of law at Tulane -- there was no legal machinery to enable the DA to get to the operators until 1972 -- and yet I was arrested by the federal government in 1971.

Mr. Hubert also testified about the discretion of the District Attorney, and you will recall that he spoke of the substantially wide latitude, meaning that the District Attorney was the one in the particular parish who made the decision when to prosecute and what to prosecute -- the point being, that the District Attorney in the particular parish has a right to set priorities.

You will recall the testimony of my Chief Assistant DA, John Volz, who said that the highest priorities in our office were with regard to cases of crimes and violence. I set those priorities, particularly as to murder and armed robber

cases in which there were victims.

That did not mean that we ignored, for example, pinball payoff cases, or victimless crimes. We sought, and I think the record shows it, to prosecute in every area, but nevertheless we had our priorities.

Now, my priorities may not be the same as those of the individuals in the Federal Government who felt I should be charged, but the fact remains -- and the record supports it -- that the priorities that I chose for my office were prosecution and conviction where there were crimes of violence and where there were victims.

We presented the Judges, and you will remember their testimony, which was to the effect that there was vigorous prosecution.

I presented former vice chief after former vice chief from my office, and their testimony, in effect, was not only that I never asked them to do anything improper ever in the pinball area, but that I never asked them to do anything improper in any area of vice.

The indictment charges that I permitted the pinball owners to operate free of substantial law enforcement interference. With that in mind, let me remind you of the testimony which indicated that I was the first DA, so far as the record shows, to hold the machines instead of giving them back.

Let me remind you of the testimony of Jim Alcock, the Chief Assistant, who in 1969 launched a Grand Jury investigation into pinball operations in an

attempt to get to the pinball owners, and he too testified, in effect, that he found himself blocked by inadequate legal machinery.

I also remind you of the 1970 pinball investigation, which was begun by Assistant District Attorney Alford, in which an attempt was made to get to the owners, and any witnesses the Grand Jury wanted to hear were called, but again the District Attorney's office found itself blocked, because 1972 had not come.

Remember that 1972 brought two things. It brought to the DA's of Louisiana for the first time the right to grant general immunity, which we had not had before, with which you can get a location owner to testify against an operator. Now, the Federal Government had that in '71, and they had it before, but we did not have it until '72, until after I was arrested. Secondly, the Louisiana Legislature in '72, for the first time, made pinball machines themselves illegal.

Until that time, we also were stuck with the fact that the owners and operators of the machines were, in effect, in a legal business. We did not have the machinery to show them to be otherwise, but nevertheless we tried.

So instead of helping the pinball operators, I went further than any DA that's testified, or was referred to in the record, in trying to get to the owners.

As a matter of fact, you may recall the testimony of the Chief Assistant DA of Jefferson Parish, who, to my surprise, testified essentially that there were plenty of pinball machines over there for nine years before 1972.

I asked him whether or not his office had ever prosecuted an owner during those nine years, and he couldn't recall, and then, on the spur of the moment, I asked him if he could recall whether his office had ever prosecuted a pinball payoff, and he couldn't recall that either.

So I suggest to you that that particular metropolitan part of our city actually, in contrast, showed that my office was doing more than that office was, because the testimony of witness after witness was that my office prosecuted effectively wherever there was evidence of pinball payoffs, and that's all that we had then that was a violation of the law.

So, in summary, when you hear the Government say, or imply, that I have in any way helped the pinball industry, I suggest to you the fact that it is quite the opposite.

Again and again, there are two patterns that come out in this case. With regard to pinball operations, my office has been diligent and steadfast and consistent. With regard to Pershing Gervais, he consistently complained because he never got anything from me.

I knew him well enough, and the record shows that, to talk to, but I also knew him well enough, and the record shows this too, not to do anything for him. You will find during your deliberations that his complaint was that during those years he was out of the office, he could never get me to do a single thing for him, and I might add that that evidences a rare instance of Gervais telling the truth.

Now, as a part of the New Orleans District Attorney's office for 16 years, I believe in law enforcement, but I believe the law can be enforced without government encouragement of treachery on the part of individuals and without the employment of deceit and without violations of the law by law enforcement agencies themselves -- such as you have seen repeatedly done by the Federal Government in this case. Furthermore, the law must be applied equally and not applied selectively. As you know, there are a number of District Attorneys in Louisiana, and in Louisiana there have been many pinball machines, but I ask you to reflect back in your memory and see if you can recall any other District Attorney in Louisiana being prosecuted by the Federal Government in this regard.

The Declaration of Independence, by which we declared our freedom from tyranny, could become meaningless, if we let it. We may have fought through the entire Revolutionary War for nothing. We may yet end up with tyranny ourselves, if we are not vigilant. The ones who can protect us best against the return of tyranny by government are the citizens of this country -- the citizens who are careful and diligent about choosing the right people to represent us in Congress, so that a certain amount of control can be maintained over the powerful bureaucracies of our Government in Washington, and the citizens who serve on juries, such as you are doing now, right here.

In that regard, when you reach a decision in your deliberations and you feel that your conscience has played a major role in your evaluation of the facts,

Not "hear"
I wasn't hearing anything
I corrected this before.
The word is BEAR

I ask you to hold fast to the way your conscience dictates. Your own conscience, if you hold fast to it, could be the very thing which prevents the return of tyranny to this government.

One final point about the verdict:

The system we have in America permits only two verdicts, guilty or not guilty. They have a third verdict, in Scotland, which is "Not Proven", which means something that's neither one or the other. They do not have that in America.

They also do not have a verdict in America called "Innocent".

Ideally there might be a system under which you could each conclude, "Guilty, "Not Guilty", or "Innocent", but there is no way to find me innocent. The law does not allow it. There's no machinery for that.

The charge that I have had hanging over me for the last two years is not necessarily undone by the verdict of "Not Guilty", but it's certainly better than "Guilty". If there were an "Innocent" plea, I would be asking you to find me innocent, because I have already had to hear ^{listen} for two years the knowledge that my own children must have some doubts about my innocence.

The poet, Browning, once said something which applies to what happens when -- however unintentionally -- you might let yourselves allow injustice to come to pass, to allow an innocent man to be convicted. He said:

"One more devil's triumph and sorrow for the angels. One wrong more to man."

Let me close, and thank you for being so patient. I do not ask you to render a verdict of innocent, because you cannot. But I do ask you to find me not guilty.

Thank you.
